

United States
Circuit Court of Appeals

For the Ninth Circuit.

Apostles.
(IN THREE VOLUMES.)

RICHMOND DREDGING COMPANY, a Corporation,
Appellant,

vs.

STANDARD AMERICAN DREDGING COMPANY,
a Corporation, CALIFORNIA RECLAMATION
COMPANY, a Corporation, and ATLAS GAS
ENGINE COMPANY, a Corporation,
Appellees.

VOLUME II.
(Pages 321 to ~~640~~, Inclusive.)

786

Upon Appeal from the United States District Court for the
Northern District of California, First Division.

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(Testimony of Rupert Hannah.)

Q. How long have some been working that you know of? A. About eight years.

Q. And those engines are still effective?

A. Still running.

Q. Do you know of the Doak Gas Engine Company?

A. I know that there is a company by the name of the Doak Gas Engine Company.

Q. Have you ever been in their shops?

A. I have not.

Q. Do you know Mr. Musladin, the Foreman of the Doak Gas Engine Company?

A. I do not. [265]

Q. Would you say that a man who is sufficiently skilled to be the foreman of the Doak Gas Engine Company who had made a careful examination of those engines, and in order to make that examination had taken the engines apart and examined them in detail, and in all their parts, would he not be in a much better position to state the condition of the repair of those engines than you are?

A. He would. We cannot see into the engine. Of course he would have a better show.

Q. Your examination of those engines made the day before yesterday lasted less than an hour, did it not, Mr. Hannah? A. Yes, sir.

Q. You knew that the United States Marshal would not permit you to dismantle the engines in any way or to attempt to operate them, and that all you could do was to stand and look at them?

A. Yes, sir, walk around and look at them

(Testimony of Rupert Hannah.)

Q. Walk around them and look at them. Pardon me, I stand corrected. That is the extent of the examination you could make?

A. That is the extent of it.

Q. Those engines were recently painted, were they not? A. They were.

Q. They had been painted since they were last run; that is, they had not been run since they were painted? A. I could not tell you that.

Q. Could you not tell from looking at them whether or not they had been run since they were painted? A. No, sir, you could not.

Q. That is not a very difficult thing to do, is it?

A. I don't know; they could have been run some since they were painted.

Q. How long could they have run without showing to the eye of the skilled mechanic that they had been run since they were painted? [266]

A. Possibly an hour or two.

Q. An hour or two. Mr. Harding says those engines were painted green; is that the color they are painted? A. I believe they are green.

Q. Are you sure they are not black?

A. I don't know which color they are.

Q. That is all you can look at, is it not, the outside of the engines. Cannot you tell us what color they were painted?

A. No, sir, I could not tell you what color; all colors look alike to me.

Q. Did you take a hammer and try the cylinders?

A. I did not.

(Testimony of Rupert Hannah.)

Q. Did you touch a hammer on the cylinders?

A. I did not.

Q. Could you tell from looking at those cylinders whether or not they were wood painted or whether they were iron?

A. A man would not build a gas engine of wood.

Q. Just answer my question. Read the question to the witness, Mr. Reporter.

(The Reporter reads the question.)

A. Yes, sir, I believe I could.

Q. How?

A. By the finish on the paint, whether rough or smooth.

Q. Did you examine it close enough to know whether it was wood or iron?

A. I supposed it was iron. I did not examine to see whether it was wood or iron. They are always made of iron, all engines that I have worked on.

Q. Do you know anything as to the prices of Samson gas engines? A. I do not.

Q. Do you know anything as to the selling price of the various parts of Samson gas engines?

A. I do not.

Q. Did you ever make an estimate as to the cost of any repairs [267] that you were sent out to do? A. I never did.

Q. You have no idea of what the shop charges for the repairing that you have done were?

A. No, sir.

Q. On each Samson gas engine are there not two fly-wheels?

(Testimony of Rupert Hannah.)

A. They are not when they are mounted together.

Q. But the individual engine always has two fly-wheels, has it not? A. Stationary.

Q. When two are hitched together, the inside fly-wheel on each engine is taken off, and replaced by the clutch?

A. One engine has a pulley, and the other has a clutch.

Q. That was the condition of those engines on the "Richmond No. 1"?

A. That was the condition of those engines.

Mr. LILLICK.—Q. And always was the condition? A. Yes, sir.

Mr. TAUGHER.—We had our engines working in the most effective way, that is the way they were hitched up on the "Richmond No. 1."

Mr. LILLICK.—That is the way they are hitched up now, and are still effective.

Mr. TAUGHER.—We cannot say how they are hitched up now because you would not permit us to make an examination to see.

Q. Now, Mr. Hannah, Mr. Musladin in the report that he makes after his careful and thorough examination of those engines says "Crank-shafts are badly cut on journals and at least one engine needs rebabbitting." Can you say whether or not that is a correct statement of the requirements of those engines in that particular?

A. I could from looking at the engines.

Q. You could not tell anything about the condition that the crank-shaft was in, or whether the engine

(Testimony of Rupert Hannah.)

needed rebabbitting or not? [268]

Mr. LILLICK.—I desire the witness to understand that the examination that Mr. Musladin made was made before the repairs that we did make on the engine, so as to leave it in the condition it is now in, were made.

Mr. TAUGHER.—Q. This examination of Mr. Musladin was made on the 11th of October last. When did you see those engines prior to the day before yesterday?

A. When they were in Lake Merritt.

Q. How long ago is that, Mr. Hannah?

A. I don't remember; I think it was in March, 1909.

Q. Then they had been run for more than a year after you saw them last?

Mr. LILLICK.—Q. Do you know that, Mr. Hannah, that they have been run a year?

A. No, sir, I do not.

Mr. TAUGHER.—Q. It was more than a year—this examination of Mr. Musladin was made more than a year after you saw the engines in Lake Merritt, and it was made just about a year before you saw them the day before yesterday. You cannot say whether the crank-shafts were badly cut on the journals or not? A. I could not.

Q. Could you say whether the engine needed rebabbitting?

A. There are liners under all the caps, and I should say it would not need rebabbitting.

Q. How could you tell that without examining it?

(Testimony of Rupert Hannah.)

A. From looking at the outside. That is the only way I can tell.

Q. Can you tell anything from looking at the outside of an engine, as to what it might need on the inside? A. I could not.

Q. Could not liners be put in there whether it needed rebabbitting [269] or not to make it look good? A. There could be.

Q. Mr. Musladin, after consulting as he testified price lists, and taking into consideration the cost of labor and various other things that go to make up the charges for repairs, said that taking off the old crank-shaft, rebabbitting the engines, boring and scraping turning-shafts and supplying material needed for that job would cost \$254. Can you say that that is anything but a reasonable charge?

A. How much did you say?

Q. \$254?

A. I am not familiar with prices of shop work at all.

Q. He said that "the fly-wheels would be difficult of removal. Two of them have been cracked and have steel bands shrunk on. If new fly-wheels are made the cost will be \$160." What would you say as to the correctness of that statement?

A. One fly-wheel has no band on, and one fly-wheel has a light band.

Q. One has no band? A. One has no band.

Q. And one has a light band?

A. One has a light band.

Q. Could you see the crack in the fly-wheel?

(Testimony of Rupert Hannah.)

A. I could not.

Q. The paint would cover cracks if they were cracked before they were painted?

A. I could not find any cracks.

Q. Paint would cover the cracks, would it not?

A. It would.

Q. Now Mr. Musladin says: "Nearly all of the studs have been loosened by the action of the salt water and will screw out easily and in some cases the casting is hardly thick enough to stand retapping new studs and retapping." Is that correct?

A. I did not try any of the studs. We could not see in the inside of the engines.

Q. He says that "The valve gear is so worn and rusty as to necessitate its entire replacement." Would you say that that statement was correct?

A. The cams on the cam-shaft are as good as ever, but as to the gears we could not see them.

Q. Could you see all of the cams?

A. All of the cams. [270]

Q. He said that the cylinder head castings are thin and rusted away around water outlet, **making** it impossible to maintain a water-tight joint. Is that correct?

A. No, sir. I would say from outward appearances it looked as good as ever.

Q. They were nicely painted, were they?

A. The joint looked as tight as ever on the outside.

Q. But the paint would cover it if it was not a good joint, would it not? A. Yes.

(Testimony of Rupert Hannah.)

Q. Do you want us to understand, Mr. Hannah, that the cylinder head that you looked at, there, so far as you could tell, without tapping it, might not have been made of wood and painted?

A. I never supposed they were made of wood.

Q. I am asking you now; answer my question.

A. Might be. I was not allowed to tap them.

Q. Were not allowed to tap them? A. No.

Q. Mr. Musladin says in his report, crank brasses will need refitting; also piston brasses. Is that correct, or do you know anything about that?

A. As far as we could see, they would not need it.

Q. Could you see whether they would or would not need it?

A. Yes, we could see—see the lower brasses, could not see the rist pin brasses.

Q. How many of the piston brasses could you see?

A. Two on each engine.

Q. How many are there?

A. Three—the crank-shaft brasses; could not see any of the piston brasses.

Q. You could not see any of these brasses at all?

A. No.

Q. Mr. Musladin says that the valve chamber castings are eaten away around water passages, and exhaust valves are worn out. Is that correct?

[271] A. I could not tell.

Q. You could not see them? A. No.

Q. You don't know anything about that?

A. The valve stems seemed about as good as when

(Testimony of Rupert Hannah.)

we repaired them over at the lake.

Q. Do you know anything about what the cartage and freight would cost to remove those engines from where they are up to a shop where they could be repaired? A. I do not.

Q. Mr. Musladin and the superintendent of the Doak Gas Engine Company in arriving at the cost of knocking down and assembling those parts fix it at \$600. Would you say that was a reasonable or an unreasonable charge?

A. Just for knocking down and assembling?

Q. That is what they charge for knocking down and assembling. A. That is a little high.

Q. You think it is a little high? A. Yes.

Q. He fixes the cost of the various incidentals at \$200 for both those engines; would that be a reasonable charge?

A. I don't know anything about that.

Q. 6 igniters \$12 each.

A. I could not say as to the prices.

Q. Then you have no idea what the repairs on those engines would cost? A. I have not.

Q. How long would it take you and two helpers to put those engines in such shape that they could be turned over and run for five minutes?

A. Just as they are now?

Q. Yes. A. About a day.

Mr. TAUGHER.—Then if it would only take a day, I would say to Mr. Lillick at the present time that we are prepared to have a complete examination made of those engines for the purpose of dem-

(Testimony of Rupert Hannah.)

onstrating whether or not they can be turned over and run the machinery of the dredger even for five minutes. [272]

Mr. LILLICK.—Go on with your examination, Mr. Taugher.

Mr. TAUGHER.—Q. Now, Mr. Betts who run those engines in the Lake Merritt job says that the repairs, all the repairs that should have been made to those engines were not completed at the time they started work in Lake Merritt. Would you say that statement was correct or otherwise?

Mr. LILLICK.—Q. Do you know, Mr. Hannah?

A. They were in good shape—I don't know how to answer that.

Mr. TAUGHER.—Read the question again.

(The last question repeated by the Reporter.)

A. They were in good working shape.

Q. Your instructions were to do whatever was needed to make them run; was that it?

A. That was it.

Q. And to make no greater expense than was necessary to make them run; was that it?

A. That was it. And I made them run.

Q. Your instructions were not to supply everything that might be needed but only such things as were needed to make those engines run?

A. In good shape.

Q. Now, I want to ask you one more question, Mr. Hannah. Do you want us to understand that you can tell anything as to the repair of those gas engines from an inspection of the outside of those engines

(Testimony of Rupert Hannah.)

which have been recently painted?

A. The only part you can tell that needs repairing is the cams; the rest of it you cannot see.

Q. Can you tell whether they need repairing or not?

A. The cams you can, from the outside.

Q. All the other things you can't tell?

A. You can't tell.

Redirect Examination.

Mr. LILLICK.—Q. You can form a general impression from the [273] outside as to whether the engines need repairing or not. Mr. Hannah?

A. A general impression?

Q. Yes.

A. Looking at it as it is now, you can't tell but what it was in good shape.

Q. And the only parts that are possibly in need of repairing are those parts which you cannot see on the inside of the engines? A. Yes, that is all.

Q. You said that you were threshing. Do you mean that you were engaged in something other than running an engine.?

A. I was running an engine and corn separator together, you know.

Q. So instead of threshing, you were running an engine? A. Both combined.

Q. Do you know how long that examination lasted the other day? Did you look at your watch to see whether it was more than an hour or less than an hour? A. I did not.

Q. About how long do you think it was?

(Testimony of Rupert Hannah.)

A. Oh probably in the neighborhood of three-quarters of an hour.

Q. Now, you could see the cylinder brasses on the engines, couldn't you? A. The crank brasses.

Q. The crank brasses? A. Yes.

Q. They were in good shape, as I understood you?

A. Looking at them from the outside, they were.

Q. You could tell by looking at them from the outside whether they were in good shape, couldn't you?

A. Only from the lost motion, that is all.

Q. Was there any lost motion?

A. There was none.

Q. You said that it would take you a day for yourself and two helpers to run those engines as they are now. A. I would want a day.

Q. Well, wouldn't you want a day for running an engine in the same— [274]

A. (Intg.) Most any engine.

Q. (Contg.) —in the same condition those are, not having been run for eight months? A. Yes.

Q. Speaking from your experience, Mr. Hannah, and that examination made the other day, what is your opinion as to whether those engines are in good shape or not?

A. Well, the only opinion I can give is that they were in good condition.

Recross-examination.

Mr. TAUGHER.—Q. I want to know, if you want to be understood as saying that you can tell from looking at the outside of a gas engine recently painted whether or not that gas engine will run or

(Testimony of Rupert Hannah.)

operate at all? A. Whether it would or not?

Q. Yes.

A. Well, if the engine was all there in good repair that would run.

Q. I understand if the engine was all there and it was in good repair it would run, but I want to know if you can say from looking at the outside of a recently painted gas engine whether or not that gas engine will operate?

Mr. LILLICK.—Those engines over there.

Mr. TAUGHER.—I am asking this question. I am talking about any engine; it can apply to these engines. A. New or old?

Q. Answer the question; never mind which one it is.

Mr. LILLICK.—I object to the question on the ground it does not include the situation of these particular engines, and assuming facts that are not in evidence.

Mr. TAUGHER.—Read the question again.

(The last question repeated by the Reporter.)

A. Yes. [275]

Q. And still you couldn't tell without tapping it whether or not that whole engine was made of wood and painted?

Mr. LILLICK.—I object to that on the ground it is assuming that the witness has testified to that, when he has not, that the witness has testified that the cylinders were made of iron, and that he could tell they were made of iron.

(Testimony of Rupert Hannah.)

Mr. TAUGHER.—Read the question.

(The last question repeated by the Reporter.)

A. Yes, I could tell whether the whole engine was made of iron if it was not all painted; just the outside of the engine was painted.

Q. You were not looking at the outside?

A. You could see the rods on the inside looking through the fly-wheel.

Further Redirect Examination.

Mr. LILLICK.—Q. Mr. Hannah, as a practical mechanic and from the examination you made of these engines the other day, you know positively and absolutely whether or not that engine under the painted parts was wood or iron, didn't you?

A. Why, sure it was iron.

Q. You know that it was iron, don't you?

A. It could not be otherwise.

Mr. TAUGHER.—Q. How do you know it was iron? A. They make them all of iron.

Mr. LILLICK.—Q. Mr. Hannah, did you not scrape some of that paint off with knives over there? A. I did on the fly-wheel.

Q. You know it was all iron, don't you?

A. I know it was all iron.

Q. Don't you know the other parts of the engine that were painted are made of iron outside of the fact that all engines are made of iron, from your examination of it?

A. Yes. We take it for granted that an engine is built of iron.

(Testimony of Rupert Hannah.)

Q. Don't you know, Mr. Hannah, that that engine over there was made of iron?

A. It was made of iron; cast iron and steel.

(A recess was taken until 2 P. M.) [276]

AFTERNOON SESSION.

[Testimony of W. J. Knight, for Respondents.]

W. J. KNIGHT, called for the respondents, sworn.

Mr. LILLICK.—Q. What is your age?

A. About 38.

Q. Occupation? A. Dredge superintendent.

Q. When did you first go on the dredger "Richmond No. 1," Mr. Knight? A. May 1, 1909.

Q. Where was the dredge then situated?

A. Lake Merritt.

Q. Do you know when the dredger commenced operations at Lake Merritt? A. No, I do not.

Q. They were then working?

A. They were then working.

Q. What engines were on board the dredger when you took charge?

A. Two Samson engines, 75 horse-power apiece.

Q. What experience have you had with gas engines? A. Considerable.

Q. How long have you been working in about dredging operations? A. Nine years.

Q. When you went on the dredger first did you go over the engines at all?

A. Well, the engines were running at the time I went to work on it, and I did not shut them down to take them apart, to make a thorough examination,

(Testimony of W. J. Knight.)

but I was not there very long before I determined the engines was not in very good condition.

Mr. TAUGHER—Q. Were or were not?

A. Were not in very good condition.

Mr. LILLICK.—Q. Why do you say they were not in very good condition?

A. Well, the crank-shaft was pretty loose; the valves, we had to grind them, the exhaust valves, the intake, we had to grind them—there was not enough horse-power.

Q. What horse-power were they developing when you first went on the job there, if you know? [277]

A. I should judge about 110 or 115.

Q. Would you consider yourself an expert engine man?

A. Well, I have had considerable experience with installing, running and repairing, about nine years dredging, and before that time I was in the machinist business.

Q. You have been a machinist? A. Yes.

Q. Working about a shop, a repair-shop?

A. Yes.

Q. Prior to the time you commenced dredging operations how long had you been a machinist, if you remember?

A. Oh, I should judge 4 or 5 years.

Q. Do you understand the construction of gas engines? A. Yes.

Q. Have you ever had occasion to take them down and put them up again? A. Yes.

Q. Have you ever worked in any gas engine shops

(Testimony of W. J. Knight.)

in San Francisco? A. No.

Q. Ever worked in any iron works in San Francisco? A. Yes, sir.

Q. Which one? A. Miners' Iron Works.

Q. How long were you there?

A. About four years.

Q. What were you doing?

A. Machinist, floor hand.

Q. Had you ever had occasion to go over the cylinders of gas engines during the time you were working in the shop? A. More or less, yes.

Q. What, if anything, did you do to those engines after you commenced the work over at Lake Merritt?

A. We ground in all the exhaust valves a very few days after I took charge of it; we put in a new crank shaft a few days after I took charge.

Q. About what time was that?

A. The crank shaft broke, I think about the 12th of May, 1909.

Q. What was the condition of the crank shaft?

A. Well, it was broken. [278]

Q. As to the other shaft, did you make any examination of the crank shaft on the other engine?

A. No.

Q. What do you base your conclusion upon that they developed only 115 horse-power?

A. On account of the decrease in speed, the valves leaking.

Q. What was the length of the shore pipe, the length of the shore pipe on the Lake Merritt job?

A. You mean the total discharge?

(Testimony of W. J. Knight.)

Q. Yes.

A. It run during the time I was there from 2,000 feet to probably 5,000 feet.

Q. On the material that you were working upon in the Lake Merritt job, how many horse power is necessary in the engines to move such material 2,000 feet? A. About 200 horse-power.

Q. Did you have anything on the pipe to aid the engines in the discharge of the material?

A. We had a booster in the line but that did not aid the engines at all, did not make any difference to the engines at all in any shape or form.

Q. What was the effect of the booster?

A. Just to increase the output.

Q. What was the character of the material at Lake Merritt?

A. Mud, sand, in places; in places gravel.

Q. Is that favorable or unfavorable material?

A. Mud is favorable.

Q. For hydraulic dredging.

A. Mud is favorable.

Q. What was the average lift of the material from the dredger to the shore pipe and discharge?

A. Between the dredge and the booster do you mean, or after it went through the booster?

Q. Before it got to the booster?

A. Well, I should judge it was just about 3 or 4 feet.

Mr. TAUGHER—Q. From the dredge to the booster?

(Testimony of W. J. Knight.)

A. From the dredge to the booster, well, 5 feet, say. [279]

Mr. LILLICK.—Q. After the lift was the discharge downhill or uphill?

A. After it left the booster?

Q. Yes.

A. Downhill the first portion of the job and uphill during the latter portion of the job, but the booster took care of that; it was on the other side of the booster and the booster took care of it.

Q. How long did you work the engines in the condition they were when you first took charge of the dredger?

A. I started repairing them along about the 11th or 12th of May, I suppose; as soon as I got a chance I started repairing them.

Q. How long did you work on the Lake Merritt job?

A. From the 1st of May, 1909, to October 6, 1909.

Q. During what portion of that time did you use those two engines?

A. All the time; that is, less lost time.

Q. Where did you work immediately after finishing the Lake Merritt job?

A. Took the dredger out of the lake and moved it to the estuary.

Q. And then where was the dredger taken?

A. It went to Fields Landing.

Q. And from there where?

A. Went to San Francisco Bay and then went to Alameda.

(Testimony of W. J. Knight.)

Q. How long did you work at Fields Landing with the dredger and the engines that were on board her when you left Oakland?

Mr. TAUGHER.—Q. Where is Fields Landing?

A. It is 7 miles from Eureka; it is what is termed at the Eureka job.

Mr. LILLICK.—Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. From October 30, 1909, to December 18, 1909.

Q. Did you use the engines during all of that time?

A. Yes. [280]

Q. Then the engines were not in use between the 6th of October and the 30th of October? A. No.

Q. Did you at any time put a steam engine on the dredger? A. About the 12th of May, 1909.

Q. That was on the Lake Merritt job?

A. Lake Merritt job.

Q. What was the purpose of that steam engine?

A. Because the gas engine did not have power enough to run both pump and cutter, and we put the steam engine on the cutter, a steam engine to run the cutter.

Q. And from the time you put on the steam engine, during the remainder of the job at Lake Merritt for what use were the Samson gas engines used, for what purpose were the Samson engines used?

A. To run the 12-inch sand and gravel pump only, the centrifugal pump.

Q. Did you take that steam engine with you to Eureka? A. Yes.

Q. During the commencement of the job at Eureka

(Testimony of W. J. Knight.)

and up to the 18th of December were the Samson engines used only for the purpose of doing the work upon the pump? A. Yes, driving the pump.

Q. Had you occasion at Eureka to use any other power than the two Samson engines and the steam engine that was on the cutter?

A. The 18th of December, 1909, we run the pump and the cutter by electric motors.

Q. What did you do with the Samson engines that were on board the dredger?

A. Left them on the dredger in the same place as they were always.

Q. When did you finish the Eureka job?

A. I am not sure about that; I think it was some time about the 14th of May, 1910.

Q. The Eureka job?

A. The Eureka job, I think it was the 14th of May, 1910. [281]

Q. Were the Samson engines used at all between the 18th of December, 1909, and the 14th of May, 1910?

A. No, sir. We started a motor on the 18th of December, an electric motor, and ran until the end of the job with them.

Q. They were not used from the 18th of December on? A. No.

Q. Then as I understand you, Mr. Knight, the Samson engines were disconnected but left upon the dredger, and the electric motor installed upon the dredger to do the work on the pump that had been formerly done by the Samson engines? A. Yes.

(Testimony of W. J. Knight.)

Q. And the steam engine was left upon the cutter?

A. We also installed a 50 horse-power electric motor to run the cutter.

Mr. TAUGHER.—Q. Take off the steam engine?

A. We left the steam engine right in place, did not bother with it at all; just simply changed the gear and put in a pulley in place.

Mr. LILLICK.—Q. Was the steam engine working on the cutter at the same time that the motor was running on the cutter?

A. Only at the same time we was using the gas engines. As soon as we installed the electricity we ran the entire plant with electricity, with the exception of the steam engine for swinging and hoisting the spuds.

Q. From Eureka where did the dredger go?

A. It came to San Francisco, to the Risdon Iron Works.

Q. What was done then?

A. We put in the tubes in the boiler and some repairs; I disremember all they done.

Q. Was the dredger put in working condition then? A. Yes.

Q. Where did you next start to work with the dredger? A. South side of Alameda. [282]

Q. When did you commence work at Alameda?

A. I think it was the 28th of May, 1910.

Q. How long did you work at Alameda?

A. I think it was the 24th of July, the same year.

Q. During that time were the Samson engines used at all?

(Testimony of W. J. Knight.)

A. I used them about a week; probably a little more while I was installing the 125 horse-power Atlas gas engine.

Q. How did you install the 125 horse-power Atlas gas engine?

A. Put it on the deck and just bolted it.

Q. Did you remove—

A. —just bolted it on to the deck; there were holes in the deck; that is all—three-quarter holes.

Q. What was done with the Samson engines?

A. We took them off and sent them over to the Richmond Dredging Company's warehouse or machine-shop.

Q. Was that done at the time you installed the 125 horse-power Atlas engine?

A. After I installed it.

Q. How long after?

A. It was probably about two or three days after.

Q. During the time you worked the Samson engines at Alameda, were they in as good condition as they were when you quit working with them at Eureka?

A. I think they were. I don't see why they should not be.

Q. During the time you were working at Eureka with the Samson engines, were they in as good a condition as they were when you were doing the work with them at Lake Merritt?

A. They were in better condition.

Q. Why? A. Because we got better results.

Q. Was there any difference in the condition of

(Testimony of W. J. Knight.)

the Samson engines when you quit working with them at Alameda from the condition they [283] were in when you commenced work on the Lake Merritt job?

A. I think they were in better condition than when I took charge of the dredger at Lake Merritt, the engines on the dredger.

Mr. TAUGHER.—Q. The engines were in better condition then or in better condition when you took charge of the dredger?

Mr. LILLICK.—He has got the answer in. Let the Reporter read the question and the answer.

(The last question and answer repeated by the Reporter.)

Mr. TAUGHER—Q. Is that your answer?

A. That is my answer.

Mr. LILLICK.—Q. Why?

A. We had the friction repaired, so that there was bearing surface enough on the flange over the friction. We reinforced the hub on the same. Very soon after I took charge at Lake Merritt I noted that one of the fly-wheels was loose; that has been repaired, so that it is not loose at the present time. We had steel bands shrunk on the pulley to reinforce the hub. We dovetailed a piece of metal on the top of the cylinders where the metal was very weak, cast iron was eaten away with the action of the salt water, to give the gasket more bearing surface. And I suppose considerable more work they put in there but I can't remember.

Q. Were you getting as good or better results in

(Testimony of W. J. Knight.)

actual operation when you quit using them at Alameda as you were when you commenced work at Lake Merritt?

A. Well, there was a difference in the character of the material.

Q. Were they developing as much horse-power?

A. I think they were developing a little more.

Q. When you quit work at Alameda with the Samson engines and took them off of the dredger had they broken down just before you quit using them or were they simply taken off in the condition that [284] they were when you were operating them before they were taken off?

Mr. TAUGHER.—I object to that as leading and suggestive.

A. They were taken off because we did not have power enough.

Mr. LILLICK.—Q. Were they in working order at the time they were taken off at Alameda?

A. Yes, sir.

Q. Had you been working with them right up to the time you took them off in Alameda?

A. We worked with them until we installed the Atlas engines, and then probably in a few days we took them off. The object of taking the Samson engines off was to make room to put another Atlas engine on, to put two Atlas engines in her.

Q. What was the reason that in Eureka you put on the electric power and discontinued using the Samson engines?

A. As I understand that, there was a forfeiture on

(Testimony of W. J. Knight.)

that job for every day we did not average 250 yards a day; we simply did not have power enough to do that amount of work.

Mr. TAUGHER.—Q. How many yards?

A. I mean 2,500 yards.

Mr. LILLICK.—Q. Where was the dredger taken after you finished the Alameda job?

A. Walnut Grove.

Q. Did you use the Samson engines again at Walnut Grove during any portion of the time you were working there?

A. No; the Samson engines were not on board at that time.

Q. During the time you were working on the Lake Merritt job was there any unusual strain put upon the Samson engines? A. No.

Q. During the time you were working on the Eureka job was there any unusual strain put upon the Samson engines? A. No.

Q. Who was working as engineer on the Lake Merritt job while you were using the Samson engines?

A. Betts worked from May 1—that is in my time, of course—to some time in September. [285]

Q. Who took his place?

A. A man by the name of—I forget his partner's name on the other watch. The man that took his place was Jake Crews.

Q. From your experience as a machinist and dredging man, can you tell, from the manner in which Mr. Betts worked and the manner in

(Testimony of W. J. Knight.)

which Mr. Crews worked, with these engines, whether or not they were competent as engineers?

A. Well, Crews was a very competent man.

Q. During the time that you were on the dredger at Lake Merritt while the Samson engines were on board and at Eureka while the Samson engines were on board, do you know of any occasion when the engines were injured in any way by reason of any lack of attention given them by the engineers?

A. No. They were supplied any necessary parts to make ordinary repairs, and it was to our advantage to keep them up in as good condition as we possibly could in order to obtain results.

Q. Were they kept in as good condition as you could keep them during that time?

A. They were.

Q. In your opinion, Mr. Knight, were they at any time overloaded or did they at any time have any unusual strains put upon them?

Mr. TAUGHER.—I object to that on the ground it is leading and suggestive.

A. They were overloaded, but they had no unusual strains put on them.

Mr. LILLICK.—Q. What was the result, if any, upon the engines themselves of overloading them?

A. The only way that you can overload a gas engine is to run it faster, more revolutions per minute than it is built for, and in that way they won't last very long; in this case the engines never ran up to the speed they were [286] built to do.

Q. In your opinion were those engines damaged in

(Testimony of W. J. Knight.)

any way during the Lake Merritt job or the Eureka job by overloading them?

Mr. TAUGHER.—I object to that question on the ground it is leading and suggestive.

A. No, sir.

Mr. LILLICK.—Q. During any of the time you were using them on the Alameda job did you overload them?

A. I had the same load all the time; that is, they had the 12-inch pump on; they have had that ever since they were built.

Q. Do you mean us to understand that the engines were overloaded during all the time that they were being worked at Lake Merritt, Eureka and Alameda?

A. They had the same load, they were overloaded. They did not have power enough to do the work; they were overloaded on account of not having power enough to do the work, in trying to get more horsepower out of the engines than they were built for.

Q. But did that work that you were doing at Lake Merritt, Eureka and Alameda injure or damage the engines to any greater extent than if they had had the ordinary work expected of them?

Mr. TAUGHER.—I object to the question on the ground it is leading and suggestive.

A. None other than the ordinary wear and tear.

Q. That is, you mean in the ordinary wear and tear of overloading engines?

A. The ordinary wear and tear of an engine.

Mr. LILLICK.—Q. What is the effect of over-

(Testimony of W. J. Knight.)

loading an engine upon the engine itself? I will change that to, what was the effect of overloading engines upon the engines themselves?

A. In this particular case? [287]

Q. In this particular case?

A. We just reduced the speed and developed less power than they were built for.

Q. Did I understand you to make a distinction between running an engine at a greater speed than it is built for and overloading it by attempting to get more work out of the engine?

A. If you overload an engine by attempting to get more power out of it you have got to run it faster than it is built for, which is a detriment to the engine; but if you overload it and decrease the horsepower, it is not hurting the engine at all; in fact, it is helping them out.

Q. Then, as I understand you, you did not during any portion of the time you worked at Lake Merritt, Eureka or Alameda overload the engines by attempting to run them at a higher rate of speed than the engines were built for?

Mr. TAUGHER.—I object to the question on the ground it is leading and suggestive.

A. No, sir.

Mr. LILLICK.—Q. Was it possible to run those engines so that they would damage themselves by having too much pressure put upon them?

Mr. TAUGHER.—I object to the question on the ground it is leading and suggestive.

A. No, sir.

(Testimony of W. J. Knight.)

Mr. LILLICK.—Q. Why not?

A. Because you simply decrease the speed and by doing so you decrease the horse-power.

Q. How much horse-power did you develop with the steam engine that you used on the cutter?

A. Well, I should judge about 20 horse-power.

Q. How much horse-power did you have on the motor that was on the booster? [288]

A. Two hundred horse-power.

Q. Did the booster and the steam engine have any effect at all upon the Samson engines?

A. The steam engine took that much portion of the machinery away from it to drive. The booster would not affect it at all.

Q. How long, if you know, did you use the Samson engines altogether on the Lake Merritt job, the Eureka job and the Alameda job?

A. Well, I should judge in the neighborhood of seven months.

Q. When you put the first Atlas engine on the dredger over at Alameda was it connected in any way with the other engines? A. No, sir.

Q. When was the second Atlas engine put upon the dredger?

A. Walnut Grove. I do not remember the date. It was the latter part of July, I should judge.

Q. While the Samson engines were on the dredger, did you at any time reinforce the friction with copper? A. No.

Q. Do you know anything about the condition of the cylinders upon the Samson engines during the

(Testimony of W. J. Knight.)

time you were running them?

A. It was in good condition.

Q. Were they in the same condition when you finished using them as they were when you commenced to use them? A. Less ordinary wear.

Q. Do you know whether they had ever had any trouble with the Samson engines before you went on, as to the cylinder heads?

A. Well, they told me, and Mr. Betts told me they had a hard time keeping the gaskets between the cylinders and the cylinder heads.

Q. What was done about that?

A. (Contg.) Between the combustion chamber and the cylinders.

Q. What was done about that?

A. Well, I believe—of course I don't know anything about it; it was before my time—I believe they [289] took some of the combustion chambers—

Mr. TAUGHER.—I object to that and ask that it be stricken out.

Mr. LILLICK.—It may go out.

Q. When you commenced work over at Lake Merritt do you know the condition of the cylinders and the cylinder heads?

A. Well, they were ate away with the salt water around the parts where the water goes through the cylinder to the cylinder heads.

Q. What did you do about that?

A. We dovetailed a piece of brass in there, as I stated before, the weakest portion of it, to give it more bearing surface. In order to explain it I would

(Testimony of W. J. Knight.)

have to make a sketch of it.

Q. What caused the pitting, if you know?

A. The action of the salt water, galvanic action.

Q. With reference to their condition in this particular respect, what difference was there when you took the Samson engines off from when you first went on the dredger over at Lake Merritt?

A. I don't know as there would be very much difference; only probably got wear, a little more wear, that is all.

Q. Is there any means of using fresh water on those engines?

A. Not without changing the suction of the surface pump.

Q. What would that have meant as to the engines themselves, the amount of work necessary to install a fresh water system?

A. Why, it costs considerable; we would have to put in a keel condenser, and run pipe all around the dredger, cooling pipe to cool this water off; have a tank on the house.

Q. Were you on the dredger, Mr. Knight, when the engines were obtained from the warehouse at Richmond and reinstalled upon the dredger?

A. I went to the Richmond Dredging Company and got the key to their warehouse—I don't remember the date—and took the [290] engines to East Oakland, and I think it was a day or two after I sprained my ankle, and that finished me on that portion of the work.

Q. Did you see them after they were reinstalled in

(Testimony of W. J. Knight.)

the dredger? A. At Richmond, yes.

Q. How long after they had been reinstalled?

A. Well, I could not remember how long after. I have been over there several times at Richmond. and seen them on almost every occasion.

Q. When did you last see the engines, Mr. Knight?

A. I think it was Tuesday morning—Tuesday afternoon.

Q. What date? A. October 17, 1911. [291]

Mr. LILLICK.—Q. What, in your opinion was the condition of those engines on last Tuesday?

A. As far as I could see the condition was as good as they were or better than they were when I took charge of them—as far as I could see.

Q. During the time you were on the dredger, Mr. Knight, were any bands shrunk on the fly-wheels?

A. I don't think so. There were two bands shrunk on the pulley.

Q. For what reason? A. To reinforce the hub.

Q. What was the condition of the hub before these bands were put on it?

A. In my opinion the hub was a little too light.

Q. Were there any cracks in the hub?

A. Not as I know of.

Q. Do you know whether or not there are any cracks in the hub now?

A. Have you reference to the pulley or fly-wheel?

Q. To the pulley.

A. Not as far as I know of.

Q. Referring to the fly-wheel, are there any cracks in the hubs of the fly-wheels?

(Testimony of W. J. Knight.)

A. I was out there last Tuesday scraping around the hubs of the fly-wheels with a knife and I could not find any cracks.

Q. Did you look carefully? A. Yes, sir.

Q. What was the condition of the two fly-wheels?

A. Good condition.

Q. In what condition were the pipes that were attached to the two engines?

A. I did not examine the pipes very carefully but they looked all right.

Q. Were the pipes in place?

A. The portions I saw were in place.

Q. In taking off the Samson engines and putting on the Atlas engines, did you injure the dredger proper any? A. No, sir.

Q. Will you tell us how the two Atlas engines were installed [292] on the dredger?

A. I had timbers from the base or foundation where the Samson engines stood built up level to the deck and the Atlas engines were installed on that.

Q. Did you injure the hull of the dredger in any way? A. No, sir.

Q. Do you know of any other case in which engines have been taken off a dredger and other engines installed in their place?

Mr. TAUGHER.—I object to the question upon the ground that it is entirely immaterial and irrelevant. A. Yes, sir.

Mr. LILLICK.—It is a common thing to do.

A. Where they have not got power enough or make changes.

(Testimony of W. J. Knight.)

Q. After the Samson engines were reinstalled upon the dredger was anything done, if you know, to place the dredger in the same condition in which it was before, with reference to its hull and the deck?

A. Yes, sir.

Q. What? A. I had a carpenter working there.

Q. What was done? Do you know?

A. Placed everything back in the same condition as it was when I took charge of it as nearly as we possibly could.

Q. What did he do, do you know?

A. Put in new planks in the deck and plugged the holes that were made by the bolts, bolting the engines down and so forth.

Q. Was it in a better or worse condition than it was before? A. In as good condition.

Q. Do you know why Mr. Betts left the employ of the Standard American Dredging Company?

A. He told me he was going to take a vacation and take a trip back east.

Q. Did you ever hear any fault found with the competency of Mr. Betts? A. No, sir.

Q. Who, if you know, suggested taking off the Samson engines [293] and installing other engines? A. I believe I suggested it.

Q. What reasons did you give?

A. To get more horse-power.

Q. Did you ever make any statements that the other engines were worn out? A. No, sir.

Q. Were they worn out? A. No, sir.

Q. How much horse-power were the Samson

(Testimony of W. J. Knight.)

engines developing when you used them last in Alameda? A. Probably 120 horse-power.

Mr. TAUGHER.—Q. 120 on the Alameda Bay?

A. Probably; I am not quite sure.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. TAUGHER.—Q. Did you have any experience with gas engines, Mr. Knight, before you went in the dredging business? A. Some.

Q. Where? A. At the Miners' Iron Works.

Q. Were there any cams on those Samson engines?

A. Cams?

Q. Yes. A. Yes, sir.

Q. How many cams were on those Samson gas engines?

A. One for each exhaust; I think there is one for each igniter—that is all I know of.

Q. You know that there were that many cams on there? A. Yes, sir.

Q. How many rocker-arms were on those engines?

A. No rocker-arms at all.

Q. No rocker-arms? A. No, sir.

Q. You are quite sure of that, are you?

A. Positive.

Q. When you took charge of the "Richmond dredge No. 1" on Lake Merritt on May 1st, 1899, those engines were not in good shape? A. No, sir.

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Q. Did they seem to you as though they had been badly used prior to the time you came on board?

A. I cannot say badly used, but it seemed to me as

(Testimony of W. J. Knight.)

though they had been overloaded, but that would not affect the engine at all.

Q. Mr. Betts testified, Mr. Knight, that about two weeks after they started on the Lake Merritt job, they changed the pulley on the pump which had the effect of decreasing the speed of the engines for the purpose of increasing the speed of the pump and that was very hard and trying on the engines. What do you say to that statement?

Mr. LILLICK.—I object to the question upon the ground that it is assuming that Mr. Betts testified to something, when it is not shown that Mr. Betts did testify to that. I have no objection to Mr. Taugher framing a question by any assumption in the evidence that there is here.

Mr. TAUGHER.—Q. Do you know that the pulley on the pump-shaft was changed?

A. I don't know anything about it.

Q. What would be the effect of changing the pulley on the pump-shaft so that it increased the speed of the engine and decreased the speed of the pump?

A. I don't know in what way you mean; decrease the size of the pulley, and make it small or large?

Q. Decrease the size of the pulley on the pump-shaft?

A. It will have a tendency to pull the engines down.

Q. It will have a tendency to pull the engines down?

A. That is, make them run at a slower speed, and

(Testimony of W. J. Knight.)

develop less horse-power.

Q. Well, would that not seriously injure and cripple the engines? [295]

A. Not necessarily; it would help the engines out.

Q. It would help the engines out? A. Yes, sir.

Q. When you put so much load on it that it will slow down the engines that does not hurt the engines at all? A. No, sir.

Q. It really helps them?

A. It really helps them.

Q. The greater the load, the slower you force the engines to revolve, the more help is given to the engines? A. The proposition is this—

Q. Just answer the question.

Mr. LILLICK.—Let the witness finish his answer.

A. If you slow an engine down with a given speed, then engines we have referred to are supposed to run 250 revolutions a minute in order to develop 150 horse-power or 75 apiece, and if you run less revolutions than 250 you are developing less power; the consequence is that it is easier on your engines.

Mr. TAUGHER.—Q. But if you put such a load on the engines that they cannot possibly run on the speed they are built to run on, but can only run at a decreased speed because of that extra load which they were not designed to carry, does that not hurt the engine? A. No, sir.

Q. You would say that it helped the engine, would you? A. I don't understand what you mean now.

Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

(Testimony of W. J. Knight.)

A. Yes, sir.

Q. You say that the work that the dredger was called on to do in Lake Merritt required at least 200 horse-power? A. Yes, sir.

Q. And those engines could only develop as a limit 150? A. That is the shop rates.

Q. What was their utmost capacity?

A. That was supposed to be their utmost capacity.
[296]

Q. What did they actually develop?

A. In the neighborhood of 110 or 115 horse-power.

Q. How do you know they only developed 110 horse-power?

A. Because they were going a slower speed than they were built to do.

Q. Was not that slower speed caused by the change in the pump-pulley? A. Yes, sir.

Q. You started to repair those engines just as soon as you got on the job?

A. I started in to repair them a few days after I got on the job.

Q. Have you any idea of the number of times that Betts reported to you that those engines needed repairing?

A. I don't remember how many times he reported.

Q. Approximately? A. I have no idea.

Q. Can you tell within 50 times how many times he reported that they needed repairing?

A. I could not.

Q. Could you say that he reported at least 50 times? A. I could not say so.

(Testimony of W. J. Knight.)

Q. Do you remember saying to Betts when he told you the machine should be stopped and the engines repaired, to go ahead and run the engines until they stopped for the purpose of changing the pipes, either shore pipe or pontoon pipe, and he could do his repairing when they were shut down?

A. Unless it was possibly the igniter or something like that, something small. If it was anything large that would be a detriment to the engine to run any length of time we shut down first.

Q. Can you tell me how many times you shut down during the Lake Merritt job just for the purpose of repairing the engines and not for the purpose of changing the shore pipe or pontoon pipe?

A. I could not. [297]

Q. You kept track of the number of days you were employed on the job altogether? A. Yes, sir.

Q. And the number of times you shut down?

A. That is all reported.

Q. And the reason for each shut down?

A. And the reason for each shut down.

Q. How many times in those reports did you shut down for the purpose of repairing the engines?

A. I cannot remember that.

Q. Can you remember within a week when the first time was after you came on the job, that you shut down for the purpose of repairing the engines?

A. Yes, sir.

Q. How long?

A. I shut down I know the 12th of May.

Q. How long did you stay shut down at that time?

(Testimony of W. J. Knight.)

A. Four days I believe.

Q. Why did you shut down at that time?

A. The crank-shaft broke.

Q. Could the engine work until a new crank-shaft had been installed? A. No, sir.

Q. Do you remember when next you shut down for the purpose of repairing the engines?

A. No, sir. During them four days we were waiting for that crank-shaft to install it, we overhauled the exhaust valves, reground them, inlet valves, and I suppose numerous other little things.

Q. What is the greatest number of cubic yards that you pumped in any one hour on the Lake Merritt job?

A. I never committed anything to memory at all.

Q. Do you know the greatest number of cubic yards you pumped in any one day?

A. I never committed any of that to memory.

Q. Then you cannot tell within a hundred yards what the greatest number of cubic yards ever pumped by "Richmond No. 1," was, while it was under your supervision? A. No, sir. [298]

Q. You told Mr. Lillick a while ago that you had to pump 2,500 cubic yards every day on the Eureka job.

A. I did not commit to memory any one day what I did do.

Q. Not on any of your jobs?

A. Not on any of my jobs. I did not commit it to memory.

Q. There is no way that you could answer that at present? A. No, sir.

(Testimony of W. J. Knight.)

Q. Mr. Perry assured us that Mr. Knight would know all those details.

A. I could find out all those details but it would probably take 2 or 3 days.

Q. 2 or 3 days? A. Probably.

Q. You had something over 5,000 feet of pipe at one time on the Lake Merritt job, did you?

A. In use?

Q. Yes. A. Yes.

Q. Did it run up to 6,000 feet? A. No, sir.

Q. How many feet short of 6,000 was the greatest length of pipe-line that you used on that job?

A. I don't think much over 5,000 feet.

Q. Do you know how much new pipe-line was bought on the Lake Merritt job?

A. The pipe was purchased before I took charge of the machine.

Q. No pipe was purchased after you took charge of it? A. No, sir.

Q. Was there much sand in the Lake Merritt job?

A. There was considerable on the Grand Avenue end.

Q. Much gravel?

A. Yes, sir. Quite a lot of it. It comes in there from the storm sewers.

Q. What proportion would you say there was of sand and gravel in the material moved by you on the Lake Merritt job?

A. Possibly 25% sand and gravel.

Q. What was the balance? A. Mud. [299]

Q. What do they call slickings?

(Testimony of W. J. Knight.)

A. That is mud.

Q. What is the easiest material to move?

A. Mud.

Q. Easiest on the dredger? A. Yes, sir.

Q. Easiest on the pipe? A. Yes, sir.

Q. It is about the same as running water through the pipe?

A. There is some friction to it; it is not the same as running water.

Q. You worked those engines night and day on the Lake Merritt job from the time you went on—on May 11th was it? A. May 1st.

Q. Until October 6th, 1909?

A. Is that the question?

Q. Yes. A. Yes, sir, less lost time.

Q. When did you first put on the steam engine to work the cutter-shaft. A. May 12th, 1909.

Q. That was in the Lake Merritt job?

A. Yes, sir.

Q. What kind of engine was that?

A. A vertical compound.

Q. New or second-hand? A. Second-hand.

Q. Where did you get it from?

A. I don't know. It came from the company's warehouse, I believe.

Q. An expensive or cheap engine?

A. I should judge it was a very expensive engine at one time. It was built by the United Iron Works.

Q. How much would you say it cost to build?

A. I could not tell.

Q. Approximately?

(Testimony of W. J. Knight.)

Mr. LILLICK.—Objected to as irrelevant and not proper cross-examination.

A. I could not tell.

Mr. TAUGHER.—Q. Did you get any permission from the Richmond Dredging Company to install that engine on the dredger? [300]

Mr. LILLICK.—I object to that as irrelevant.

A. I did not. I don't know whether the company did.

Mr. TAUGHER.—Q. Where did you put that engine in? A. The forward end of the dredger.

Q. How did you keep it in place?

A. Bolted it to the deck.

Q. Did the Richmond Dredging Company ever know that that engine was put aboard?

A. I don't know.

Q. Was Mr. Cutting or anybody from the Richmond Dredging Company on the dredger during the time she was under your supervision in Lake Merritt?

A. I believe I saw Mr. Cutting there several times. He asked me for a chew of tobacco once.

Q. Did you give it to him? A. Yes, sir.

Q. Did he remark at the time that he never thought of chewing tobacco except when he saw someone else chewing it?

Mr. LILLICK.—I object to the question as irrelevant and immaterial.

A. Probably he did say something to that effect.

Mr. TAUGHER.—Q. When was that steam engine taken off dredger "Richmond No. 1"?

(Testimony of W. J. Knight.)

A. When the dredge came back from Walnut Grove.

Q. It was on the dredge all the time from the time it was installed in Lake Merritt until after it was brought back from the Walnut Grove job?

A. Yes, sir.

Q. In December, 1910 or January, 1911?

A. Yes, sir, I think it was December, 1910.

Q. After you finished the Lake Merritt job, you took the dredger then to Eureka?

A. Yes, sir, we took it to Field's Landing 7 miles from Eureka.

Q. That is in Eureka Bay? A. Yes, sir.

Q. Did you accompany the dredger to Eureka?

A. No, sir. [301]

Q. She went on the ocean from San Francisco to Eureka? A. Yes, sir.

Q. How long did the trip occupy, do you know?

Mr. LILLICK.—I object to the question as irrelevant and immaterial, and as already been gone into.

A. I believe 30 hours from bar to bar. I am not quite sure.

Mr. TAUGHER.—Q. How long did you use the Samson gas engines and the steam engine that was working the cutter on the Eureka job?

A. From October 30th, 1909, to December 18th, 1909, a month and 18 days.

Q. Did you make any repairs on the engines during that time? A. All necessary repairs.

Q. How often did you shut down during that period to make repairs on the Samson gas engines?

(Testimony of W. J. Knight.)

A. I don't know. Whenever it was needed.

Q. Was that often?

A. I would not say it was often. I cannot tell just how often it was.

Q. What power did it take to deposit 2,500 cubic yards per day on the Eureka job?

A. Under those conditions it would take at least 200 horse-power.

Q. You worked the Samson engines for a month and how many days? A. 18 days.

Q. A month and 18 days? A. Yes, sir.

Q. When you finished the Eureka job were the Samson engines badly in need of repairs?

A. No, sir.

Q. What did you do with them after you brought them back to San Francisco?

A. We repaired them during the time they were laid up at Eureka while we were using the motor. The engineer worked on them. [302]

Q. What repairs were made on them?

A. We took the shaft out, and had that pulley put on so that it would be tight; had two bands shrunk on there; the valves ground in; bearings taken out, as I expected to use the machine at Alameda.

Q. When did you finish the Eureka job?

A. I think it was May 14th, 1910.

Q. When you brought the dredger "Richmond No. 1" back from Eureka, did you take the engines to a repair shop?

A. We took the dredger to the Risdon Iron Works.

(Testimony of W. J. Knight.)

Q. For what purpose?

A. To put studs in, retube the boiler and repairs on ladder and suction pipe, and probably some other things that I cannot remember.

Q. How long did the making of those repairs take?

A. I don't know. I think it was over a week.

Q. Then you commenced the Alameda job?

A. Yes, sir.

Q. How long did you use the Samson engines on the Alameda job? A. Probably about a week.

Q. What was the extent of that job?

A. The length of the job?

Q. What was the extent of that job? How big a job was it? A. Less than two months.

Q. A hard job or an easy one?

A. It is pretty hard sand; pretty hard pumping.

Q. How many cubic yards were there altogether in the job?

A. I believe there were 50,000 cubic yards.

Q. How long did you work the Samson gas engines on that job? A. Probably about a week.

Q. And why did you change?

A. Because the company told me about this job that they had at Walnut Grove. The levees up there at [303] that time were about 25 feet above the water, to the top of the levees, 25 feet above water, and I told the company that I did not have power enough to pump the sand over that high levee.

Q. Then what happened?

A. We installed the Atlas engine.

Q. Why did you install the Atlas engine?

(Testimony of W. J. Knight.)

A. Because we were figuring on going to Walnut Grove.

Q. Why did you not wait to install the Atlas engines until you got to Walnut Grove?

A. The simple reason was, we were close to material here, and one of the engines we were going to put in was taken out of the launch that towed us up there.

Q. Why did you not complete the Alameda job with the Samson engines before you put in the Atlas engine?

A. Because we were getting ready for the Walnut Grove job while we were here, taking advantage of the change.

Q. How much horse-power did the Atlas gas engine develop that you first put in? How much horse-power did that Atlas gas engine develop?

A. They used to call the shop rate 150. I think they developed about 125 strong.

Q. Did you do the Alameda job with the one Atlas gas engine? A. Yes, sir.

Q. You think it developed 125 horse-power, do you? A. Yes, sir.

(Testimony of W. J. Knight.)

Q. Did you use that Atlas gas engine in connection with the Samson engines?

A. No, sir. The company wanted me to, but I told them I did not think it would be advisable.

Q. Why not?

A. Because the engines are of different make, different speed, and I told either Mr. Perry, or someone in the company, that it would figure their heads off to get the right size of pulleys to put on the pump-shaft.

Q. Where did you put that Atlas gas engine?

A. On the deck, [304] between the Samson engines and the pump.

Q. When you went to Walnut Grove you took off the Samson gas engines and you put the Atlas gas engines in the place where the *Sam* gas engines had formerly been, did you not?

A. We took off the Samson engines before we went to Walnut Grove. We took them off at Alameda.

Q. You took them off at Alameda? A. Yes, sir.

Q. On the Walnut Grove job were not the Atlas gas engines in the place formerly occupied by the Samson engines? A. Yes, sir.

Q. While you were doing the job at Alameda, the Atlas gas engine was not in the place where the Samson gas engines had formerly been? A. No, sir.

Q. So that you did not have the Atlas gas engine on the Alameda job in the position that you did have her on the Walnut Grove job? A. No, sir.

Q. So you were not getting ready for the Walnut

(Testimony of W. J. Knight.)

Grove job when you put the Atlas gas engine on the place you did put it on the Alameda job?

A. Yes, sir, I was.

Q. How were you preparing?

A. Because Mr. Perry or somebody in the company wanted me to run the Samson engines and the Atlas engines in one unit on that pump, which I advised them out of and they finally consented to let me take the engine out of the launch "Wink."

Q. What engine out?

A. Out of the launch "Wink."

Q. When was the engine from the "Wink" first put on to the dredger?

A. As soon as we got to Walnut Grove.

Q. It was not put on the Alameda job?

A. No, sir.

Q. You were not telling the truth when you said that the Atlas gas engine was put on for the purpose of getting ready for the Walnut Grove job?

A. There were two engines, one we rented from [305] the Atlas people and the other one was out of the launch "Wink."

Q. I am talking, Mr. Knight, of the Alameda job now. A. Yes, sir.

Q. Why did you put the first Atlas gas engine on the dredger "Richmond No. 1" on the Alameda job?

A. Because as I stated already, the Standard American Dredging Company wanted me to run one Atlas engine and the two Samson engines in one unit, which I advised them out of. When I went to Wal-

(Testimony of W. J. Knight.)

nut Grove I put on the other engine out of the launch
“Wink.”

Q. Now, I want you to confine yourself to the Alameda job. The Atlas gas engine that was put on the Alameda job before, developed 125 horse-power. You say that the Samson engines that were on the dredger at the time, would develop 125 horse-power. Why did you put on the Atlas engine when the Samson engines were already in place?

A. Because Mr. Perry, as I have stated, wanted me to make preparations for the Walnut Grove job.

Q. You did not get the dredger ready for the Walnut Grove job until after you took out the Samson engines, did you? A. We could not do it.

Q. Of course you could not. You were lying when you stated that you put the Atlas gas engine on board on the Alameda job for the purpose of getting ready for the Walnut Grove job?

Mr. SPILMAN.—We object to the use of such language.

Mr. TAUGHER.—I will withdraw the word “lying” and insert, “not speaking the truth.”

Mr. SPILMAN.—We insist on having the question as you stated it.

A. No, sir, not lying.

Mr. TAUGHER.—Q. Just state it then.

A. The two Samson engines stood in their original place. We [306] put another Atlas engine between the Samson engines as I have stated, on the deck, in order to run the Samson engines and the Atlas engine in one unit.

(Testimony of W. J. Knight.)

Q. Yes; but you never did that?

A. The simple reason is that I advised Mr. Perry out of it, or the Standard American Dredging Company.

Q. I understand that; you have said that several times.

Mr. LILLICK.—While I have time to enter an objection I desire to object to the intemperate method of the proctor on the other side in his manner of cross-examination.

Mr. TAUGHER.—Q. I will ask the witness to answer the question.

A. I have already answered it.

Q. Read it to him, Mr. Reporter.

(The Reporter reads the question.)

Mr. TAUGHER.—I wish to state that I offer to reform that question by stating that he did not speak the truth instead of “lying” and the proctor for the respondent insisted on the word “lying” being inserted by the Reporter.

Mr. SPILMAN.—Incidentally the offer was made after our objection.

A. I have already answered the question.

Mr. TAUGHER.—Q. Once more, Mr. Knight. I want you to tell us why you put the Atlas gas engine on the dredger “Richmond No. 1” for the Alameda job?

A. Why did we put it on for the Alameda job?

Q. Yes.

A. We put it on there for the simple reason for the Walnut Grove job.

(Testimony of W. J. Knight.)

Q. Not for the purpose of doing the Alameda job?

A. I never stated it was for the Alameda job. We did not have power enough to run the dredger and that is all there was to it, and we put an Atlas engine in. [307]

Q. You did not have power to run the dredger?

A. No, sir.

Q. You stated the Samson engines would develop 125 horse-power? A. No, sir.

Q. How much would they develop?

A. 110 probably.

Q. How much would they develop at the commencement of the Alameda job?

A. Probably 110 to 120.

Q. Then the Atlas gas engine that was installed at the commencement of the Alameda job, would only develop 5 horse-power more than you claim the Samson engines would develop; is that correct?

A. No, sir, it is not.

Q. State what is that fact then.

A. I say probably in the case of the Samson engines, but I am pretty sure it is a fact on the Atlas.

Q. Tell us what the fact is as to the Samson engines?

A. I say probably. I could not tell you the fact.

Q. How many cubic yards did they deposit during the last day you worked with the Samson gas engines on the Alameda job?

A. I could not tell you.

Q. What portion of the day did they work?

A. The biggest portion of the day.

(Testimony of W. J. Knight.)

Q. What portion of the capacity of the pump did the dredger develop during that last day that you used the Samson engines?

A. Whatever the engines would give to it.

Q. How much would you say that was?

A. The Atlas engine?

Q. No. A. The Samson engines?

Q. Yes. A. 110 to 120 horse-power.

Q. Then, when you went to the Walnut Grove job you had to take the Atlas gas engine from where it was on the Alameda job and install it in the place vacated by the Samson engines, did you not?

A. That is right. [308]

Q. How can you say you were getting the dredger ready for the Walnut Grove job when you installed that Atlas engine in that temporary and inconvenient way that it was done for the Alameda job?

A. I have already stated before that the Standard American Dredging Company wanted me to run the Atlas engine and the two Samson engines in one unit for that Walnut Grove job, which I advised them out of.

(An adjournment was here taken until to-morrow, Friday morning, October 20th, 1911, at 10 o'clock.)
[309]

Friday, October 20th, 1911.

W. J. KNIGHT, cross-examination, resumed:

Mr. TAUGHER.—Q. Mr. Knight, it was rather a difficult and hard job installing those Atlas gas engines on that dredger, was it not?

(Testimony of W. J. Knight.)

A. No, sir; not very.

Q. What do you mean by "not very"?

A. Just a matter of taking the Samson engines out and putting timber for a base for the Atlas engines.

Q. How were those timbers fixed to the boat?

A. Put down to the foundation of the Samson engines.

Q. Were those timbers bolted to the ship?

A. A few bolts, yes.

Q. Were they firmly affixed to the boat?

A. Just by bolts.

Q. What size bolts?

A. I think one inch in diameter.

Q. What length?

A. They varied in length 2 feet up to 4 feet.

Q. Those timbers were firmly affixed to the boat?

A. Bolted to the boat.

Q. It was quite a difficult job installing those Atlas gas engines, was it? A. No, sir, not very.

Q. What do you mean by "not very"?

A. No difficult job when you had the material to do the thing with, and the Samson engines were out of the way.

Q. How long did it take you to install the Atlas gas engines in the manner you have described?

A. I could not remember.

Q. About how long? A. I don't know.

Q. Was it a day or a half or 2 or 3 days?

A. It would probably be more than 2 or 3 days; several days we were getting ready; getting the timbers and putting them in. Do you refer to the first

(Testimony of W. J. Knight.)

Samson engine or the first Atlas engine? [310]

Q. I have reference to the two Atlas engines that were installed in the place of the Samson engines which had been removed.

A. We started in early and it was quite awhile before we got through with the Alameda job, after we were ready to put in the other Atlas engine. We could not take that until we got to Walnut Grove because we needed the launch "Wink" to tow us up there.

Q. That is all right, that part of it, but that is not what I want. I want to know how long after you got to Walnut Grove did it take to install those two Atlas gas engines and put them in place ready to run?

A. Probably 24 hours.

Q. 24 hours?

A. But all the timber and everything else was put in place at Alameda with the exception of the engines.

Q. How long did it take to put those timbers in place? A. Several days.

Q. Several days? A. Yes, sir.

Q. Several full days? A. Several days.

Q. Several full days you were fixing those timbers to receive the Atlas gas engines? A. Yes, sir.

Q. What do you mean by "several," how many?

A. I don't know.

Q. Would it take a week?

A. Probably it would; probably more.

Q. How many men? A. Two men.

Q. It took a week to get those timbers ready and shaped up to put in place?

(Testimony of W. J. Knight.)

A. To take the Samson engines out and put the timbers in there it needed two men.

Q. When did you take the Samson engines out?

A. I don't remember the date. It was in the early part of the time we were working at Alameda.

Q. While you were fixing those timbers and putting them in place to receive the Atlas gas engines substituted for the old [311] Samson engines, where did you have the one Atlas gas engine that was installed during the early part of the Alameda job?

A. On the deck between the Samson engines and the pump.

Q. Did you build any foundation for that engine?

A. Yes, sir, we put braces up between the keelson and the deck—shores.

Q. For what purpose?

A. So as to hold up the weight of the engine.

Q. What did you put there?

A. Braces—shores. The carpenter called them shores; timbers 6 by 6 or 12 by 12.

Q. Those braces had no weight to carry after you installed the Atlas gas engines as they were doing the whole of the Walnut Grove job?

A. No, sir. When I put the Atlas gas engines back where the Samson engines were I took those braces out.

Q. How long did the Alameda job last?

A. Not quite two months.

Q. Do you remember when you started the Alameda job? A. I think it was May 28, 1910.

(Testimony of W. J. Knight.)

Q. And you finished on July 24th, did you not?

A. The 24th, I think.

Q. You were working altogether 43 days?

A. Probably.

Q. 43 days that you were operating?

A. No, sir, we were not operating all that time.

Q. You were not operating all of 43 days?

A. No, sir.

Q. Mr. Perry said the whole job took 57 days, did it not?

Mr. LILLICK.—I object to the form of the question in reference to what Mr. Perry testified to.

Mr. TAUGHER.—Read the question, Mr. Reporter. (The Reporter reads the question.) I will reform the question and leave out “Mr. Perry said.” The whole job took 57 days, did it not?

A. From the 24th of May to July 28th. Whatever [312] time that is, how many days, I don’t know; less the time we were shut down when the bulkhead broke.

Q. Was it on May 24th or May 28th when you started there? A. I think it was May 28th.

Q. Then, there would be three days in May?

A. Yes, sir.

Q. All of June, which is 30 days? A. Yes, sir.

Q. How many days in July? A. 24.

Q. That would be 57 days altogether. Is that correct?

A. Less the time we lost as near as I can remember.

Q. You lost seven days on account of the breaking

(Testimony of W. J. Knight.)

of a bulkhead, did you not?

A. Yes, sir. I don't know how much time we lost, but we lost some time.

Q. You lost about seven days besides that, during the job, for various other reasons?

A. Probably the total time that we lost for various reasons, I don't know.

Q. That would be 43 days that you were actually operating?

A. I don't know about that. I could not tell you the exact amount of time lost.

Q. You operated those old Samson engines on that job less than a week or more than a week?

A. A week and probably more, I said.

Q. How much more or how much less? Just tell us.

A. Probably two weeks; I am not sure about it.

Q. I just want to get what it was, or what you want to state it was. How long did you operate the Samson engines on that job before you put on the Atlas gas engines?

A. I could not come any closer than a week.

Q. That is, you think it was about a week that you were operating them?

A. Between a week and two weeks; not over two weeks.

Q. You put them on at least 43 days before you finished the job. You put on the Atlas gas engine at least 43 days before you finished that job? [313]

A. Probably I did.

Q. How many cubic yards of filling was required

(Testimony of W. J. Knight.)

to complete that job?

A. In the neighborhood of 50,000, I believe.

Q. Did you work night and day on that job?

A. Yes, sir, less lost time.

Q. That was about 1,270 yards a day that you did on that job? That would be an average for the time you were working?

Mr. LILLICK.—Q. Have you figured that out yourself, Mr. Knight?

A. No, sir, I have not figured it out myself.

Mr. TAUGHER.—Q. Look at my figures and see if they are correct (handing).

A. (After examination.) In the neighborhood of that; probably within a hundred yards.

Q. Well, that was rather a difficult job, was it not, or was it?

A. Yes, sir, pretty heavy sand; pretty heavy pumping.

Q. That was done mostly by the Atlas gas engine?

A. Yes, sir.

Q. Did you have any other power helping that Atlas gas engine? Did you have a booster on?

A. No booster, but I believe I had the steam-cutter engine.

Q. Helping on the pump?

A. Running the cutter.

Q. Well, can't you remember?

A. The cutter engine was on board, but I am not sure now. Yes, I am positive. I had the steam-cutter engine on that job.

(Testimony of W. J. Knight.)

Q. How much horse-power did the steam-cutter develop?

A. In the neighborhood of about 20 horse-power.

Q. About 20 horse-power? A. Yes, sir.

Q. Then if the Atlas gas engine had to run the cutter and the pumps, as well, it would not have gone more than 1,000 yards a day, would it?

A. Probably it would not.

Q. Well, now, you averaged for your whole time on the Alameda [314] job something over 3,000 cubic yards a day, did you not?

A. On the Alameda job?

Q. No, on the Lake Merritt job.

A. I don't know. It is too long ago. I forget all about that. I do not think we averaged 3,000 yards a day.

Q. On the whole time you were working, did you not average 3,000 yards a day?

Mr. LILLICK.—I object to the question as irrelevant and immaterial.

A. I do not think so.

Mr. TAUGHER.—Q. On the Lake Merritt job I am talking of now, 3,100 yards a day, the average for the whole time. Do you remember how many cubic yards there were in the Lake Merritt job?

A. I do not.

Q. Did you keep track of it at all?

A. I sent in daily reports.

Q. Mr. Perry testified that *there* 493,000 cubic yards in the job, which was completed in 156 working days. Do you know whether or not that state-

(Testimony of W. J. Knight.)

ment was correct?

Mr. LILLICK.—We object to the form of the question, and if the Proctor is to refer to any more of Mr. Perry's testimony we ask that it be read with question and answer.

A. I don't know.

Mr. TAUGHER.—Q. Can you remember the greatest amount of pumping done in any single day on the Lake Merritt job? A. No, sir.

Q. You cannot remember the average number of yards pumped on the Lake Merritt job?

A. No, sir.

Q. You cannot give any idea of the number of yards? A. No, sir.

Q. And you made a report of it every day, did you? A. Every day. [315]

Q. How many days were you making your reports? A. I made a daily report every day.

Q. For how many days? A. Every day we ran.

Q. How many days were you on the job?

A. From May 1st to October 6th.

Q. Can you tell the number of cubic yards that you pumped in any one day on that job?

A. No, sir.

Q. Can you tell approximately the largest number of cubic yards pumped in any one day?

A. No, sir.

Q. Can you tell within 200 yards? A. No, sir.

Q. Can you tell within 500 yards?

A. I can make a guess at it.

Q. Can you tell within 500 cubic yards of the larg-

(Testimony of W. J. Knight.)

est number of cubic yards pumped in any one day?

A. No, sir, I cannot, but the Lake Merritt job had more power than the Alameda job.

Q. You can remember that, can you? You do know that on the Alameda job you did not average over 1,200 yards per day?

A. I know what you figured.

Q. Just figure it yourself and tell us.

A. Probably it is within 100 yards of that.

Q. Within 100 yards of what?

A. Within 100 yards of your figures, which are 1,270 yards.

Q. Helping the Atlas gas engine on that job you had the steam engine? A. Yes, sir.

Q. You say you had additional power on the Lake Merritt job? A. Yes, sir.

Q. Not on the dredger, did you?

A. Only the steam engine which run the cutter.

Q. The pumps were run entirely by the Samson engines on the Lake Merritt job, were they not?

A. The pump on board the [316] dredger was run entirely by the Samson gas engines.

Q. And that did the whole of the dredging work except that when it got out in the pipe-line the booster accelerated the movement started by the pump on the dredger?

A. The gas engines on the "Richmond" put that material just as far as it comfortably could and we were governed by that in placing the booster-pump in line. We were governed a good deal by that. The booster-pump on the longest line pumped about

(Testimony of W. J. Knight.)

4,000 feet, and the Samson engines about 1,000 feet.

Q. The Samson engines did the whole of the dredging operations and sent the material through the pipe-line to where the booster accelerated the movement. Was that not it?

A. Yes, sir, that was only 1,000 feet, and the booster put up the rest of the feet, 4,000 feet or whatever it was.

Q. Now, Mr. Knight, if you say those Samson engines developed more power at the beginning of the Eureka job than they did at the beginning of the Lake Merritt job, and the use that you put them to in Eureka was so beneficial to them that when you came down to the commencement of the Alameda job, they were even better than they were when you started the Eureka job, how is it you threw those engines out 50 days before your job was finished, and put on an engine that could only deliver 1,270 yards a day, when on the Lake Merritt job the Samson engines delivered over 3,000?

Mr. LILLICK.—We object to the form of the question. It is assuming a number of things that have not been testified to, and we object to the manner of counsel in pounding on the table, and leaning over and glaring into the witness's face.

A. There are about 4 or 5 questions there in one, but the principal question, I suppose, is why we took the engines out. The engines were taken out because we did not have power enough [317] to run the dredger for the Walnut Grove job. The Atlas gas

(Testimony of W. J. Knight.)

engine is a far better engine. We get more engine hours out of it, or more running time, in other words, the difference in the material that was displaced in Alameda is not as favorable as the material displaced in Lake Merritt.

Mr. TAUGHER.—Q. Mr. Perry testified that the Alameda job was a very easy job to handle. What would you say as to that statement?

A. It is an easy job if you have power enough.

Q. How long was the pipe-line on the Alameda job?

A. Probably 1,000 feet or 1,500; between 1,000 and 1,500 feet.

Q. That was the longest pipe-line?

A. 1,500.

Q. What was the shortest?

A. Probably 1,000. I am not quite sure about it. That is as near as I can guess.

Q. How much less material can you put through a 1,500 foot pipe-line than you can through a 1,000 foot pipe-line?

A. Well, I could not tell you anything like that. It depends on friction, how many turns, and how many leaks you have in the pipe and a lot of other things.

Q. Take the same pipe-line and just lengthen the pipe-line from 1,000 to 1,500, with all the conditions the same, how much difference will it make in the number of yards delivered through the pipe-line?

A. It will make considerable. I do not know how much.

(Testimony of W. J. Knight.)

Q. But the principal reason that you put on the Atlas gas engine on the Alameda job was to get ready for the Walnut Grove job. That is what you said?

A. Yes, sir.

Q. The reason that you took them off was to get ready for the Walnut Grove job? A. Yes, sir.

Q. Yet you took them off about 50 days before you finished, or [318] about a week after you started—

A. That was all right, but if we could—

Q. Just one minute.

Mr. LILLICK.—Mr. Knight, go right on and answer the question as you propose to answer. You have a right to answer.

Mr. TAUGHER.—I have not finished the question. A. Go ahead.

Q. Go ahead and answer that much of it.

A. I have lost the question now.

Mr. LILLICK.—Q. Read the question as it was given. (The Reporter reads the question.)

Mr. TAUGHER.—Add to that question, the Alameda job.

A. It was the intention of the Standard American Dredging Company to run the one Atlas engine and the two Samson engines in unit to drive that pump. I advised them not to do so, because the engines were of a different type, and different make, and different speed, and I could not very well run them in one unit. If I had obeyed orders and done as they wanted me to do we would have used the three engines on the Alameda job which would have

(Testimony of W. J. Knight.)

increased our output.

Q. But you did not do that?

A. I did not do that.

Mr. LILLICK.—Q. Why not? A. Why not?

Q. Yes. A. Because I was afraid to.

Mr. TAUGHER.—Q. You were afraid of what?

A. I was afraid of breaking the shafts of the Samson engines.

Q. Then, you never attempted to do that?

A. No—I attempted to, but after I got the Atlas engine installed, ready to connect them up finally, they consented to finish [319] that job with the one engine, and for me to take the Samson engines out and put in the foundation for the Atlas engine and finish that Alameda job with the one engine, and when we got to Walnut Grove to take the engine out of the launch “Wink” and put that on there.

Q. That was to be done almost two months after this time that you are talking of now?

A. As I have already stated, the company wanted me to run the Atlas engine and the two Samson engines at one unit in order to increase the output of the Alameda job.

Q. You have testified to that four or five times.

A. You keep on asking me about it.

Q. You knew that you were not going to do that?

A. No, sir, I did not know it. I have to obey orders, but sometimes the company takes my advice.

Q. You knew of all of those objections before you put on the Atlas gas engine, did you not?

A. Well, I did not give it a thought at that time,

(Testimony of W. J. Knight.)

probably until I started to work on it.

Q. Then, when you came to the conclusion you could not use the Atlas gas engine in conjunction with the Samson gas engines why did you continue to use the Samson engines?

A. Because I had to take them out and put the foundation in for the Atlas engine.

Q. You said a moment ago that would only take three days with two men, and this removal was made a month and a half before you would start on the Walnut Grove job.

A. After we got the Atlas engine going we simply took out the Samson engines. There was no use switching back after we had the Atlas engine installed temporarily, because we were running better than we would with the Samson engines. It was a far better engine, and cost 25 or 30 per cent more money. [320]

Q. Mr. Perry said it only cost about three thousand or \$3,500?

A. I don't know what they cost but they are worth more than a Samson engine by the looks of them.

Q. Yet, that Atlas engine only delivered 1,270 cubic yards per day, whereas the Samson gas engines on the Lake Merritt job delivered over 3,000 cubic yards a day; and yet you say that the Samson gas engines were as good when you threw them out as they were when you started the Lake Merritt job. Is that what you meant us to understand?

Mr. LILLICK.—We object to the question on the

(Testimony of W. J. Knight.)

ground that it is assuming something in evidence that this witness has not testified to and on the ground that it is complex.

A. I think the Samson engines were in just as good a condition when we took them out as they were when I took charge of the engines on May 1st, 1909, less reasonable wear and tear.

Mr. TAUGHER.—Q. Who gave orders for the repairs to be made on the Samson gas engines when you brought them back from Eureka?

A. I gave orders for some repairs to be done while we were at Eureka.

Q. What were those repairs?

A. I took out the crank-shaft and sent it to the Eureka Foundry.

Mr. LILLICK.—You may refer to this. (Handing a paper to the witness.)

A. I remember it—sent it to the foundry and had the fly-wheel bored out and bushed, band shrunk on the pulley, to reinforce the hub, and I had the gas engineer take up all the bearings, fit the brasses, and do all necessary work that was required, as I expected to use the engines at the south side of Alameda.

Q. When were those repairs made at Eureka?

A. During the time we were running the electric motor. [321]

Q. Did that put the engines in good repair up there then? A. Yes, sir, in good condition.

Q. Then, why did you take them to the repair shop as soon as you arrived in San Francisco?

(Testimony of W. J. Knight.)

A. I don't think we done a great deal to them engines in San Francisco. I think we retubed the boiler, and done work in the ladder and suction-pipe and such things as that. There might have been a little wiring done on the engines at the Risdon Iron Works.

Q. After the Atlas gas engine started to work on the Alameda job did the Samson engines do any more work on that job? A. What is that?

Q. After the Atlas gas engine was started to work on the Alameda job, did the Samson engines do anything more on the job? A. No, sir.

Q. They were taken out? A. Taken out.

Q. When did you take them off of the boat?

A. I don't remember the date. It must have been in June, 1910.

Q. Who sent those engines to Point Richmond?

A. The Standard American Dredging Company, I believe.

Q. Who gave the instructions to do it?

A. I don't know.

Q. You did not? A. I did not.

Q. Where was the dredger when the engines were taken out?

Mr. LILLICK.—I object to the question as irrelevant and immaterial.

A. At the south side of Alameda.

Mr. TAUGHER.—Q. In San Francisco Bay?

A. Yes, sir.

Q. How soon after the Samson gas engines were taken off, was one or both of the Atlas gas engines

(Testimony of W. J. Knight.)

affixed in the place formerly occupied by the Samson gas engines?

Mr. LILLICK.—We object to the question upon the ground that it has already been answered several times. [322]

Mr. TAUGHER.—I do not remember that it was ever asked before by me.

A. One Atlas engine was put on the dredge while the Samson engines were there, and the other Atlas engine was installed when we got to Walnut Grove.

Q. Was the first Atlas gas engine put in the place formerly occupied by the Samson engine?

A. No, sir, it was put between the Samson engines and the pumps until we got to Walnut Grove. Then, we changed it.

Q. Nothing was put in the place formerly occupied by the Samson engines until you got to Walnut Grove? A. No, sir, only the timbers at the base.

Q. What was the greatest length of pipe-line used on the Walnut Grove job?

A. Probably 2,200 feet.

Q. Was any new pipe purchased for the Walnut Grove job?

Mr. LILLICK.—We object to the question as incompetent, irrelevant, immaterial and not proper cross-examination.

A. I don't remember.

Q. Were you not the superintendent of the Walnut Grove job?

A. Yes, sir, but I never ordered any pipe.

Q. You did not order any pipe? A. No, sir.

(Testimony of W. J. Knight.)

Q. Was not some new pipe used on that Walnut Grove job?

Mr. LILLICK.—We object to the question upon the ground that it is irrelevant and immaterial.

A. I don't know.

Mr. TAUGHER.—Q. If any new pipe had been used, would you not know it?

A. Yes, sir, I think I would. I don't remember now whether we had any new pipe or not, or whether they got some from other places.

Q. Your memory is hazy upon that point?

A. Yes, sir.

Q. But you say you did not order any new pipe on the Walnut [323] Grove job?

A. I did not order any pipe at all. The pipe was there before I got there with the exception of what I was using at Alameda.

Q. Did you not order all the supplies for the job?

Mr. LILLICK.—We object to the question as irrelevant and immaterial.

A. Yes, sir.

Mr. TAUGHER.—Q. How much pipe did you bring from the Walnut Grove job with you?

A. I don't remember.

Q. How much pipe did you bring from the Alameda job, I mean?

A. All that we used excepting what we wore out.

Q. How much did you bring?

A. Probably 1,000 feet, or 1,200 that we took from Alameda.

(Testimony of W. J. Knight.)

Q. How much pipe did you bring back from the Eureka job?

A. I don't know. It is too long ago. I don't remember those things.

Q. What repairs did you make to the Samson gas engines after you took them off the dredger, and before you sent them to Richmond?

A. I don't know as I made any repairs at that time after I took them off of the dredge.

Q. What was the effect of salt water on the various parts of the engine? I will withdraw that. What kind of water was used for circulating water on these engines?

A. Salt water. We could use no other in the way the thing was connected up, as long as the dredge was floating in salt water.

Q. What is the effect of using salt water as circulating water in these engines?

A. Galvanic action sets in when two foreign metals come together such as cast iron and steel studs. It eats the cast iron around the studs.

Q. But is that action accelerated or retarded when the salt water becomes heated?

A. I think when it becomes heated it makes it worse. [324]

Q. How many parts of the Samson gas engines did the salt water touch?

A. It touched all the cylinder heads; all the cylinders; that is, it circulated inside the cylinder head, the water jacket of the cylinder, the valve chamber. I think that is all.

(Testimony of W. J. Knight.)

Q. Around the pistons? A. No, sir.

Q. Now, Mr. Knight, if one of those parts touched by the salt water in its circulating course around those engines, if one of those parts became so rusty as to be useless for the purpose it was supposed to serve there, would it be more advisable to replace such injured part or to repair it in some other way?

A. The only advisable way as I see to repair them is to tap out the holes larger and put in larger studs, which was being done before I took charge of the engines; and Mr. Betts showed me a sample of the studs they were putting in when I took charge of the dredger.

Q. Is that the proper way to repair those parts?

A. Well, you would have to throw parts away as soon as they got rusted with salt water, and I am afraid it would run pretty heavy expenses. The proper way is to repair everything injured in the best way you can and as promptly as you can.

Q. Well, it takes salt water quite a long time to corrode iron, doesn't it?

A. Yes, it does—it depends on the character of the iron. Soft, mushy iron, it don't take long to eat it up.

Q. The iron on the Samson engines was a first-class iron, was it not?

A. I never tested it. I don't know how to test it.

Q. Salt water did not have much effect upon those engines, did it?

A. It ate away around the studs; I only had to put in larger studs when I took charge of the dredger.

(Testimony of W. J. Knight.)

Q. Those studs were in good shape, were they not, when you turned [325] it over—were they not?

A. I think so.

Q. You say you went over to the warehouse of the Point Richmond Canal and Land Company and procured the old engines along about the latter part of January of this year, did you?

A. I went to the Richmond Dredging Company's office and I got the key from Mr. Wernse, and then I went over there and got the engines.

Q. When was that, if you remember?

A. I think it was January of this year.

Q. The early part or the latter part of January?

A. The latter part of January.

Q. The latter part of January? A. Yes.

Q. Did you give instructions as to the repairs to be made to the engines? A. No.

Q. Did you take those engines apart at that time when you went over there?

A. No, I broke my foot about two days after that, or sprained my ankle, and I was laid up.

Q. Did you not make any examination of those engines?

A. I made no examination of the engines at all.

Q. At the time you took them away? A. No.

Q. You did not see them from that time until you went over on Tuesday of this week?

A. I saw them on several occasions when I was over there at Richmond; the Standard American Dredging Company had a watchman over there.

Q. Did you take them down during any of those

(Testimony of W. J. Knight.)

times to examine them except in the way you have said and testified to?

A. I looked them over and I felt of the bearings, and so on.

Q. Did you run them for any of that time?

A. No, I did not.

Q. After they were installed on the dredger did you start the dredger?

A. I never run them. I think the parties who re-installed them run them. [326]

Q. Well, who were those parties?

A. I don't know. I think it is a machinist of the United Iron Works. I don't know who the engineer was. I don't know whether it was a machinist of the United Iron Works; they have got a bill for repairs there.

Q. Did you say it was a machinist from the United Iron Works? A. From the United Iron Works.

Q. That is, of San Francisco? A. Of Oakland.

Q. Who else?

A. They had two machinists, I think, from the United Iron Works, and engineer, our regular dredger engineer was there, and some of the rest of the dredger men.

Q. Were you consulted by Mr. Perry during September or October of this year, 1911, with regard to the condition of those old engines which were removed from the "Richmond" in 1910?

A. He asked me on several occasions, I do not remember the date or month, of the condition of the engines.

(Testimony of W. J. Knight.)

Q. Did you tell Mr. Perry during September or October of this year those engines would not run?

A. I did not.

Q. That you could not start them?

A. I did not.

Q. Or that they could not be started?

A. I did not.

Q. How many rubber connections did you use on the Walnut Grove job? A. I could not remember.

Q. About how many?

A. Probably—we had a very short line up there—probably 10, something like that.

Q. Ten? A. Yes.

Q. How many did you bring with the dredger to Richmond?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and not proper cross-examination.

A. I did not take the dredge to Richmond.

Mr. TAUGHER.—Q. When cutter knives become defective from long use and a dredger is in need of repairs to its cutter knives, [327] how is the dredger ordinarily repaired with respect to those cutter knives? Are such cutter knives replaced by new ones or are the defective ones mended?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and not proper cross-examination.

A. Replaced by new ones.

Mr. TAUGHER.—Q. When the rubber connections become defective from long use, how are they repaired?

Mr. LILLICK.—Objected to as immaterial and

(Testimony of W. J. Knight.)

irrelevant, and not proper cross-examination.

A. Patch them, as long as you can and then get new ones, when they are entirely worn out.

Mr. TAUGHER.—Q. Are they replaced as soon as they become worn and patched for future use, or are they patched immediately they become defective and put on again on the machine?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and not proper cross-examination.

A. They are patched and put in use immediately; but we can't run any length of time with holes in the connections, and the material will be pumped into the water instead of the fill.

Mr. TAUGHER.—Q. Don't you immediately replace them by new connections and then patch the old one for a spare to use in some other part where the strain is not so great?

Mr. LILLICK.—The same objection.

A. Sometimes we have got new ones in stock and sometimes we have not new ones in stock; if not we simply take the pontoon out of the line, shorten the line.

Mr. TAUGHER.—Q. Mr. Perry, in his testimony, was asked these questions: [328]

“Q. After it (meaning rubber connection) has become worn so that it does not pay to repair, what do you do then?

A. When the connection is beyond repair we cut it up and use it for patches.

Q. Replace it with a new one?

A. If necessary. If we need more than we have

(Testimony of W. J. Knight.)

got on hand in the pipe-line and require a greater length of pipe-line.

Q. Do those connections last a long time or a short time?

A. Sometimes they last 6 or 8 hours; and sometimes they last 30 days, sometimes 60 days. It depends on conditions."

Is that correct.

Mr. LILLICK.—Objected to as not proper cross-examination.

A. That is correct.

Mr. TAUGHER.—Q. Now, when a rubber connection becomes defective, is it the ordinary practice to replace it with another rubber connection, and then after the defective one has been taken off, and it can be patched and used as a spare, you do so, or do you cut it up for patches on other ones, or as soon as it becomes defective do you immediately replace it with another?

Mr. LILLICK.—We object to the question on the ground that it is immaterial and irrelevant, and not proper cross-examination, and as having been already answered.

A. We might replace it with another patched one or with a new one, if we had it on hand; if we have not got one on hand, then we shorten the line. [329]

Mr. TAUGHER.—Q. When the suction pipe becomes defective, how is it ordinarily repaired, by replacement or by being mended? A. Replacement.

Mr. LILLICK.—Objected to as irrelevant and immaterial.

(Testimony of W. J. Knight.)

Mr. TAUGHER.—Q. How are the boiler tubes ordinarily repaired, by replacement or by being mended?

Mr. LILLICK.—Same objection.

A. Replacement.

Mr. TAUGHER.—Q. How is the cutter gear ordinarily repaired, by having the defective parts replaced or mended?

A. Some places it is mended and some places new parts.

Q. When the pump becomes defective, are the various parts replaced or mended?

Mr. LILLICK.—Same objection.

A. Sometimes mended and sometimes replaced anew.

Mr. TAUGHER.—Q. Now, in Mr. Perry's testimony he was asked the following questions and answered as follows: "Q. What part of the pump of the dredger 'Richmond No. 1' was repaired while in your possession? A. Many parts. All parts I think. Q. All parts. Would that mean the whole new pump? A. All parts have been repaired many times." Is that correct?

Mr. LILLICK.—Objected to as not proper cross-examination.

A. The first pump we had in there, the one that was in there when Mr. Perry, I suppose, got it from the Richmond Dredging Company, was repaired on several occasions, and one time we got a new casing; other times we got a new runner; whenever it was necessary we put in liners, when they wore out.

(Testimony of W. J. Knight.)

Mr. TAUGHER.—Q. Well, what part of the original pump is new on board the dredger?

A. The stand. [330]

Q. The stand? A. The bed plate.

Q. The balance of the pump is new, is it?

A. Yes, has been.

Q. Is it worn out now too?

A. In good condition.

Q. The pump is in good condition? A. Yes.

Q. What position do you occupy with the Standard American Dredging Company?

A. Superintendent.

Q. How many parts of the old engines were replaced by new parts?

A. Well, it is pretty hard for me to say; lots of parts; exhaust valves, when needed, springs, igniters, mica washers.

Q. How many parts of those old Samson gas engines were touched by the circulating waters, did you say? Just name them again.

Mr. LILLICK.—Objected to on the ground it is repetition and unduly encumbering the record.

A. All the cylinders, the cylinder heads, and the valve chambers. The water had to circulate around them in order to keep them cool while running.

Mr. TAUGHER.—Q. Any other parts that were touched by the circulating water?

A. Not that I know of.

Q. Now, if all of those parts had become useless through the corroding effect of the salt water and they were all useless, the cylinders and the cylinder

(Testimony of W. J. Knight.)

heads and the valve chambers, and the valve gear, I suppose, too—that is touched, isn't it?

A. The valve gear, the salt water don't touch that at all.

Q. Then the cylinders, the cylinder heads, and the valve chambers were all useless because of the corroding effect of salt water—would it be cheaper, more economical to replace those by new parts and to attach them to the engine or to purchase new engines?

Mr. LILLICK.—Objected to as immaterial and irrelevant. [331]

A. It would depend.

Mr. TAUGHER.—Q. For working on your own dredger, we will say.

A. It depends on conditions, how bad they are eaten away. If they are only ate away in places, just around the studs, all that is necessary is to retap the holes and put in large studs.

Q. But if they were badly eaten away, if those parts were badly corroded and eaten away, would it be more economical to purchase new cylinders, cylinder heads and valve chambers and attach them on to the old base or to purchase new engines outright?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and on the basis of the question asking for a pure guess on the part of the witness.

A. If they were eaten away, which don't exist in this case, it would be cheaper to put on new cylinders.

Mr. TAUGHER.—Q. And new cylinder heads too?

A. If they were eaten away, so as to be absolutely

(Testimony of W. J. Knight.)

no use, it would be cheaper, but that don't exist in this case.

Q. But would it be better business? A. Yes.

Q. More economical? A. Yes.

Q. Now, did I understand you to say on your direct examination that you worked those engines for about seven months in Lake Merritt? A. No, sir.

Q. For how long were you working in Lake Merritt?

A. From May 1 to October 6, 1909; that is, that is all I operated.

Q. May, June, July, August, September—well, you worked for over five months. How long had they been operating in Lake Merritt before you came on?

A. I don't know.

Q. Then, you operated those engines for five months in Lake Merritt?

A. Five months and six days, I think. [332]

Q. How long in Eureka?

A. About a month and 18 days, from October 30, 1909, to December 18, 1909.

Q. That was five months and 6 days and a month and 18 days at Field's Landing. And how long in Alameda?

Mr. LILLICK.—We object to all of these questions on the ground that they are repetition and are unduly encumbering the record.

A. Between a week and two weeks.

Mr. TAUGHER.—Q. Say 12 days. That is, that you worked it for 7 months and 6 days, the engines constantly overloaded for that time, and you still

(Testimony of W. J. Knight.)

testify that after working them constantly night and day for over 7 months, constantly overloaded during all of that time, that they were in better condition when you got through than when you started. Is that what you want us to understand, Mr. Knight?

Mr. LILLICK.—We object to the question on the ground that it is assuming something that the witness has not testified to at all; that the witness has not testified that the engines were constantly overloaded.

A. Read the question.

Mr. TAUGHER.—Yes, he did testify to it more than once. I will stand on the testimony as to that.

(The last question repeated by the Reporter.)

A. The only way that you can put more strain—

Q. Just answer that question.

Mr. LILLICK.—Q. Mr. Knight, answer the question as you propose to answer it, and when you are through, if it does not satisfy Mr. Taugher, he can ask you another question; but you have a right to answer the question in your own way. Now, repeat the question to Mr. Knight. [333]

(The last question again repeated by the Reporter.)

A. They are in better condition.

Mr. TAUGHER.—Q. And you want to further testify that notwithstanding the fact that they were in better condition, you took off the two engines, the two Samson engines, and did the whole of the Alameda job, practically the whole of the Alameda job, with one Atlas gas engine, getting out about 1,200

(Testimony of W. J. Knight.)

cubic yards a day?

A. The Atlas engine is a far superior engine, and we got better engine hours, better running time out of it; it costs a good deal more money, better built in every respect.

Q. Did you ever figure how much the dredger "Richmond No. 1" was earning per hour on those various jobs?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. I have, but I have forgotten it.

Mr. TAUGHER.—Q. You have forgotten that?

A. Yes.

Q. Can you tell how much at the most was ever earned in one hour on the Alameda job, the Lake Merritt job or the Eureka job?

A. I could not tell you.

Q. Can you tell what her average earnings per hour were on any of those jobs?

Mr. LILLICK.—We object to that as immaterial and irrelevant, and uselessly encumbering the record. This witness has testified he does not know anything about the earning end of the plant or the cost end of the plant.

Mr. TAUGHER.—He said a moment ago he had figured it up but did not remember it.

Mr. LILLICK.—Then, that all adds the more to the objection; the witness has testified he does not remember.

Mr. TAUGHER.—I want to see how much he does remember of these [334] things. I might assist

(Testimony of W. J. Knight.)

his memory a little bit by some questions. Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. I can tell what the average output per hour was before I took the Samson engines off for one week, and when I installed the motor in Eureka; I looked that up last night.

Q. Did you confine your search last night to that one particular thing?

A. That one particular thing.

Q. Did your attorney tell you to look up that one particular thing? A. I believe he did.

Q. And to look up no others?

A. He didn't tell me to look up no others.

Q. Did he intimate that that was the only information you should bring here this morning, that one particular piece of information out of the whole of these jobs? A. No.

Q. Now, if Mr. Perry testified that the average output for the whole running time in the Lake Merritt job was over 3,000 cubic yards a day, would you say that was correct?

Mr. LILLICK.—We object to that on the ground that it is not proper cross-examination; on the further ground that the witness has been asked some questions several times, and that the record is being unduly encumbered.

Mr. TAUGHER.—I object to Mr. Lillick making objections here in any way but to the forms of the questions, objections going to the form of the ques-

(Testimony of W. J. Knight.)

tions alone; these objections do not serve any purpose.

Mr. LILLICK.—They will on a motion to tax costs.

Mr. TAUGHER.—You can have your remedy, whatever it may be, if you have any rights. [335] I object to Mr. Lillick's objections interposed as he does interpose them, and the reason that they are put there is for the purpose of prompting the witness as to how he feels about the question; and in view of the stipulation that was made at the commencement of the taking of this testimony, I cannot see what other object he might have in interspersing objections to anything but the form of the question—if it were not for such purpose.

Mr. LILLICK.—What stipulation do you refer to?

Mr. TAUGHER.—The stipulation at the commencement of taking the testimony, that any objections would not be made except as to the form of the questions.

Mr. LILLICK.—No such stipulation in the record. We are taking the testimony before a **Commissioner**, now and not by deposition.

Mr. TAUGHER.—Read the question.

(The last question repeated by the Reporter.)

A. I do not know.

Q. You did not look that up last night? A. No.

Q. What is the average life of a gas engine when well handled and not overloaded?

A. It depends on the construction of it.

Q. Of a Samson gas engine of 75 horse-power?

(Testimony of W. J. Knight.)

A. It depends on the constructions, of course. Sometimes they have, even a Samson engine—some engines are better than others.

Q. I am asking for the average?

A. Probably 5 or 6 years.

Q. 5 or 6 years? A. Yes.

Q. How long have you known them to last?

A. The first experience I have had with a Samson gas engine is on the dredge "Richmond."

Q. What makes of gas engines are you most familiar with? [336]

A. The Standard, or Atlas.

Q. How long will an Atlas ordinarily last with good handling? A. And Harding gas engine.

Q. Answer the question.

A. 10 or 15 years probably.

Q. 10 or 15 years? A. Yes.

Q. Have you known them to last longer than that?

A. No, I haven't.

Q. What would you say would be the life of a gas engine operated by incompetent men?

Mr. LILLICK.—Objected to as being irrelevant and immaterial and not being proper cross-examination, and as impossible for the witness to answer with detail.

A. Why, as a general rule, they are operated by incompetent men. I do not know as that makes any difference in the life of the engine. The working parts is liable to be let get hot and be scored a little, but that won't affect the life of the engine.

Mr. TAUGHER.—Q. It does not make much

(Testimony of W. J. Knight.)

difference in the life of an engine whether it is operated by competent or incompetent men?

A. As a general rule, they are operated by incompetent men. For instance, take Crowley's people, several of them are incompetent.

Q. Who? A. The Crowley Launch Company.

Q. Those boats are laid up a good part of every day for repairs and various other things; they don't attempt to run them for 24 hours like they do on the dredger, do they, Mr. Knight?

Mr. LILLICK.—Objected to as irrelevant and immaterial.

A. Well, they have machinists that are employed all the time to overhaul the engines.

Mr. TAUGHER.—Q. And they only run parts of each day, don't they, as a general thing?

Mr. LILLICK.—The same objection. [337]

A. I guess so; they are not running steady all the time.

Mr. TAUGHER.—Q. Now, you say that the salt water that had been used as circulating water prior to the time that you took charge of the engines in Lake Merritt had seriously injured the engines but from your answers here I would take it that you want us to understand that the salt water that was used as circulating water after the time that you took charge did not injure the engines any.

A. I do not want you to understand that at all.

Q. You did not use a different kind of salt water than they had used prior to that time?

A. I did not say that the salt water did not damage

(Testimony of W. J. Knight.)

the engines while I had charge of them.

Q. Then, the salt water did damage them while you had charge of them, didn't it?

A. Nothing to stop the salt water from doing the damage; you cannot use any other, the way the pump was installed, without making changes.

Q. Well, but you said the engines were in better condition after all the use that you had given them than they were when you took charge of them; that is right?

A. I am referring to the engines in general, not to one particular portion of them.

Q. You did not use any different kind of salt water? A. Just took it from the bay.

Q. You don't know whether the salt water you used had some curative properties that would have cured the corroding that had been done by the salt water baths it had?

Mr. LILLICK.—We object to the manner of counsel towards the witness as exemplified by the remark just copied into the record.

Mr. TAUGHER.—Q. When did you last see these engines, the Samson gas engines? [338]

A. I think it was last Tuesday.

Q. You took over at that time with you Mr. Harding and Mr. Hannah, did you not? A. Yes.

Q. For the purpose of making an inspection of those engines? A. Yes.

Q. That is, the inspection was to consist merely of looking at the outside of the engines, was it not, Mr. Knight?

(Testimony of W. J. Knight.)

A. It was not to take anything down or apart.

Q. Well, Mr. Harding testified that you were not permitted to tap the engines with a hammer or in any other way inspect them other than looking at the engines as they stood.

A. I believe the permit was just to allow us to examine them engines, and not to take anything apart or not to attempt it; of course, we could touch them. I do not see where we was restricted from touching them.

Q. Mr. Hannah testified that the examination took up about three-quarters of an hour; is that correct?

Mr. LILLICK.—We object to that as not proper cross-examination.

A. Probably it is.

Mr. TAUGHER.—Q. Well, how long did the examination last? A. Probably an hour.

Q. Probably an hour? A. Yes.

Q. Had those engines been recently painted?

A. They were painted about the first of the year, January or February.

Q. Had they been used any since they were painted? A. I don't know.

Q. Would your examination inform you to that extent, whether they had been used since they were painted or not? A. No.

Q. You could not tell from your examination whether those engines had ever been run at all since they were painted? A. No. [339]

Q. What color are they painted?

A. Green and black, I think.

(Testimony of W. J. Knight.)

Q. Green and black, you think? A. Yes.

Q. Well, do you know what color they are painted?

A. I think the body, the main body, is green, and the heads is black, and some of the pipe work is black.

Q. You stated in your direct examination, if I remember correctly, that the engines looked to be in better condition now than when you first saw them?

A. Yes.

Q. That is, from an outside view they looked better? A. Yes.

Q. You did not attempt to see the inside of the engines at all? A. I say I felt them.

Q. With what? A. With my hand.

Q. What do you mean by you felt them?

A. I shook the valves and shook the inlet valves, shook the exhaust valves, to see whether they were in good condition.

Q. Could you tell by shaking whether or not they were in good condition?

A. Yes. That is, I could tell if it was tight around the stem.

Q. Could you tell from that whether they had been rusted tight or not? A. Yes.

Q. Did you find them tight?

A. I could not shake them if they were rusted tight.

Q. Did you find them tight?

A. Well, there was a couple of them that stuck a little on account of laying there quite a while, the oil just drains right around, and probably it was the

(Testimony of W. J. Knight.)

oil itself that kind of caused the exhaust valves to stick.

Q. Then you mean they were better painted than when you first saw them? [340]

Mr. LILLICK.—I object to the form of the question.

A. I believe they were in better condition, taken as a whole, both their bearings, and valve gear and everything.

Mr. TAUGHER.—Q. Will paint cover up any cracks that might be on the engine?

A. Very easily scrape the paint off.

Q. Did you scrape the paint off those engines?

A. Yes, I just scraped the grease off the hub of the fly-wheel, where there was no paint.

Q. You said yesterday, in effect, that you had known of engines to be taken off a dredger before when they ceased to develop power sufficient to operate the dredger? A. Yes.

Q. From what dredger were they taken?

A. The dredger "Uncle Sam."

Q. Who owns that?

A. American Dredging Company.

Q. By whom were they taken off?

A. By the American Dredging Company.

Q. That is, they took them off of their own dredger? A. Yes.

Q. A man is always permitted to take engines off his own dredger, isn't he?

Mr. LILLICK.—Objected to as not proper cross-examination.

(Testimony of W. J. Knight.)

Mr. TAUGHER.—Q. As far as you know?

A. As far as I know, yes.

Q. That was not the impression that your testimony created yesterday.

Mr. LILLICK.—Objected to as not proper cross-examination.

A. I answered the question correctly, though.

Mr. TAUGHER.—Q. I will have occasion to look at that again and see. You say that you suggested taking the Samson gas engines off and putting on the Atlas gas engines. A. Yes.

Q. To whom did you suggest it?

A. To the Standard American Dredging Company.

Q. To what officers?

A. I am not quite sure whether Mr. Perry or Mr. Cummings. [341]

Q. Do you know the Doak Gas Engine Company?

A. I do not.

Q. Have you ever heard of them.

A. I have heard of them, yes.

Q. Do you know where their plant is?

A. I do not.

Q. Do you know Mr. Musladin? A. I do not.

Q. How much experience have you had with gas engines?

A. More or less, I had while I was working with the American Dredging Company, and I had more or less experience repairing the engines on the launches, overhauling them in the shops, and one thing and another.

(Testimony of W. J. Knight.)

Q. Did you ever work as repairman for any engine company?

A. For the Miners Iron Works; they did not make a specialty of gas engines, but they built them and repaired them; just a general repairing shop.

Q. Were you the repairman for the gas engine work that came into that shop?

A. No; they did not keep anybody specially on any one line of work.

Q. How big a place is that?

A. I judge they employ 80 or 90 men at present.

Q. You were a mechanic working there, were you?

A. Yes.

Q. How long ago is that?

A. Before I went dredging. I have been dredging about nine years.

Q. How long did you work for them?

A. Probably 4 years.

Q. How many men did they employ when you worked there?

A. I should judge probably 150 or so.

Q. You were one of their machinists, were you?

A. Floor hand, yes.

Q. Floor hand? A. Yes.

Q. How much experience with the gas engines did you have there? A. Not a great deal.

Q. Did you work on gas engines all the time that you were there one month? [342]

A. It is pretty hard to say, 10 or 12 years ago.

Q. After leaving there you started in dredging work, did you? A. Yes.

(Testimony of W. J. Knight.)

Q. What kind of power on the dredgers that you first went on, gas engines? A. Steam.

Q. How long did you work on dredgers with steam power?

A. About five and a half or six years.

Q. And you have been dredging how long?

A. About 9 years.

Q. Then, three years ago you worked in the dredger with the gas engines on?

A. Three years ago last May I started on the "Richmond."

Q. That was the first dredger that you worked on that had gas engines, was it not?

A. Gas engines was the main power, yes.

Q. What do you mean by gas engines being the main power?

A. Their main power was run by gas engines.

Q. What dredger did you work on that had gas engines for auxiliary power?

A. I had gas engines on the "Uncle Sam" for a little while running the bilge pump.

Q. Of what power was that gas engine?

A. I should judge about 4 or 5 horse-power.

Q. That would be too small to run the smallest automobile that runs around here, wouldn't it?

A. You bet it would.

Q. Then, at the time that you came on the dredger "Richmond No. 1" you had no experience whatever with gas engines? A. Yes.

Q. Except as you have told us.

A. I done considerable repairing while I was, I

(Testimony of W. J. Knight.)

used to have to do all the repairing for the American Dredging Company on their launches. We had lathes and a drill press and things on board.

Q. Those are just ordinary things that go in the small machine shop. [343]

Mr. LILLICK.—Q. Are you through, Mr. Knight?

A. That is all I claim to be in this testimony, to be able to install, operate and repair.

Mr. TAUGHER.—Q. Those are nice, large, inclusive words. I want to know what your particular experience is. That is what I want. The Court can judge whether you have experience to talk upon the matter as an expert.

Mr. LILLICK.—I object to the intimidating language of counsel and leaning across the table in saying what he said.

Mr. TAUGHER.—I want to state right now that I was not leaning across the table or using any intimidating or loud language, and Mr. Lillick evidently has some ulterior motive in making such an objection, and the Reporter can probably, if he feels so inclined, state what he saw of the matter.

Mr. LILLICK.—Mr. Knight, with my permission, if another question is addressed to you in that manner, refuse to answer.

Mr. TAUGHER.—Excuse me if I have been intimidating at all in my language; if I was, it was certainly without my knowledge. Mr. Knight certainly does not look scared.

Q. So you had no experience with gas engines on

(Testimony of W. J. Knight.)

a dredger until you took charge of the "Richmond No. 1."

A. I have stated we had repaired—

Q. I am talking about a dredger; just confine yourself to that.

A. I had experience with gas engines on the dredger "Uncle Sam," yes.

Q. And that gas engine was only for the purpose of running a little bilge pump, was it?

A. That one engine, yes; but I had to repair the launch engines.

Q. And the only other experience that you had with gas engines as a machinist was 12 years prior to that time? A. That is right. [344]

Mr. LILLICK.—Q. Read that question and answer again. (The last question and answer repeated by the Reporter.) Is that who you mean?

A. No, that is not right.

Mr. TAUGHER.—Q. State what the fact is.

A. I had experience with a gas engine all the time I was working for the American Dredging Company, which is five and a half or six years, and I left the Miners Iron Works to go to work for them.

Q. What gas engines did the American Dredging Company have on their dredgers?

A. They had Standard engines on their launches.

Q. I am talking about the dredgers.

A. They had them on the dredger to repair, they belonged to the launches; I do not remember the make of the engines that they operated.

Q. What was your position on that dredger?

(Testimony of W. J. Knight.)

A. Chief engineer.

Q. Chief engineer? A. Yes.

Q. And as chief engineer you did the repairing for the launches, did you?

A. I done all the repair work on the power plant, and did any repair work on the launches, and everything.

Q. Did you do the repair work while chief engineer? A. Yes.

Q. Not only on the dredger that you were on but on the launches? A. Yes.

Q. Did you have a machinist working with you?

A. No. Only when we was making big changes, big repairs, I had a machinist occasionally.

Q. But your work on the dredger was chief engineer of steam engines?

A. Steam engines and repairman.

Q. You were chief engineer?

A. I was chief engineer and I was keeping the plant in running order.

Q. You were chief engineer, you were the machinist and repairman?

A. That is the idea. [345]

Q. All combined. A. Yes.

Q. That is what I want to know. But you never worked around gas engines exclusively?

A. No, not exclusively.

Q. You never had any experience with gas engines on board of a dredger until you went aboard the "Richmond No. 1" except that one little gas engine

(Testimony of W. J. Knight.)

to drive the small bilge pump?

A. I consider repairing gas engines as experience.

Q. You can evade the question as much as you like, but I will ask it over again. Read the question.

(The last question repeated by the Reporter.)

A. Not in one that used gas engines for their principal power.

Mr. LILLICK.—Q. A gas engine works the same whether on a dredger or on land, does it not, Mr. Knight? A. Yes.

Mr. TAUGHER.—Q. Then, what experience did you have outside of that small gas engine to drive that bilge pump on dredgers where they used gas engines as auxiliary power? A. Repairing.

Q. That is not an answer to my question.

A. You asked me what experience I had.

Q. Yes. A. And I said repairing.

Q. Repairing what? A. Repairing engines.

Q. Belonging to dredgers?

A. Belonging to the company.

Q. How many launches did they have?

A. Two at that time.

Q. Driven by gas engines? A. Yes.

Q. Of what horse-power were those engines?

A. One was 50 and the other was 30 horse-power.

Q. About the same size as those in automobile engines?

A. No; they are large engines; 50 horse-power is a large engine.

Q. And with that experience you claim you are an expert on gas engines?

(Testimony of W. J. Knight.)

A. I do not claim to be an expert gas engine man.
[346]

Q. You do not claim to be an expert gas engine man?

Mr. LILLICK.—I submit the witness at the commencement of his testimony said he was not an expert gas engine man, but considered himself a mechanic.

Mr. TAUGHER.—I am glad we have arrived at that.

Q. Now, you testified somewhat concerning this report made by Mr. Musladin, the foreman of the Doak Gas Engine Company, did you not?

A. Did I testify?

Q. You testified concerning the charges, did you not, yesterday?

A. I don't know whether I did or not.

Q. Mr. Musladin testified that the crank-shaft was badly cut in the journals, the crank-shafts of those old Samson engines, at the time he made his examination in October, 1910, and in order to make that examination, he testified that he took the engines down and took them apart and thoroughly examined them, and his report shows various need of repair that I will go over in detail now for the purpose of asking you what you think about these things, to see if you know anything about that. Now, Mr. Musladin testified that the crank-shafts were badly cut on the journals, and at least one engine needs rehabilitating.

A. I do not think that is the case. I don't know

(Testimony of W. J. Knight.)

which engine he refers to that needs babbitting; but there is shims in all the journal bearings, and as long as there is shims there, and the babbitt is not melted out by overheating, I do not think it is necessary that they should be rebabbitted.

Q. He says the crank-shafts are badly cut on the journals. Do you know whether that is correct or not?

A. I don't remember their being cut on the journals. I don't remember of having any hot bearings on the journals, and if the journals never got overheated [347] and certainly not cut unless they were cut before I took charge of the engines.

Q. Where did you ever take those engines apart?

A. When?

Q. Yes, and where?

A. I took them apart in Eureka, and sent the crank-shaft to the Eureka foundry.

Q. The crank-shaft of what?

A. Of one of the Samson engines.

Q. Of one of them?

A. Yes. The other was taken out; the other crank-shaft was taken out when I was moving out of Lake Merritt and sent to the United Iron Works to have a fly-wheel fitted on and a hub of piston reinforced and put on shaft properly.

Q. Was that done? A. Yes.

Q. By whom?

A. The United Iron Works of Oakland.

Q. Of Oakland? A. Yes.

Q. When did you see the crank-shafts last in any

(Testimony of W. J. Knight.)

of those engines?

A. I saw them last Tuesday, the crank-shafts.

Q. The journals, I mean.

A. You can't see the journals without taking the cap off.

Q. When did you see the journals of those crank-shafts last? A. I could not remember that.

Q. Did you ever see them? A. Yes.

Q. When?

A. When I had the shafts out I know I saw them then.

Q. Well, you had one shaft out in Lake Merritt?

A. When I was moving out of Lake Merritt into the estuary, which was in October, 1909, and the other one at Eureka.

Q. What was it taken out at Eureka for?

A. The pulley was loose on the shaft and I sent it up there to be bored and bushed and put on the shaft properly.

Q. How long would it take to take out the old crank-shafts with a mechanic and two men?

A. About half a day if you have a [348] chain and tackle, something to lift that. The chain and tackle is an equipment of the machine-shop; they don't do anything without them.

Q. But I am talking about the taking off of these crank-shafts of this dredger as she lies over at Point Richmond.

A. Well there is a chain and tackle there that belongs to the dredge.

Q. Belongs to the dredge? A. Yes.

(Testimony of W. J. Knight.)

Q. You say it could be done in half a day?

A. Yes.

Q. The foreman of the Doak Gas Engine Company says it will take five days to do that. Would you say that he was entirely mistaken as to the time it would take? A. Yes.

Q. He is mistaken or misstating it, one or the other, is he?

A. He is either mistaken or don't know what he is talking about when he says five days for taking the crank-shaft out.

Q. The half day that you mention would include taking off the fly-wheels?

A. No, it would not include taking the fly-wheels off.

Q. How long would it take to take off the fly-wheels?

A. If you had a key-drift and necessary tools, probably take a day, with two men.

Q. How long would it take over where the engine was?

A. If it took any longer than that the fly-wheels must be on there good and solid.

Q. Do you know what the material would cost for rebabbitting one of those engines?

A. It would depend on what class of babbitt you got. If you use genuine babbitt, that runs up to 40 or 50 cents a pound; if you use No. 4 you could get it for about 8 cents a pound. [349]

Q. Mr. Musladen says it would cost \$50 for the material.

(Testimony of W. J. Knight.)

A. If you use genuine babbitt it will probably cost that much.

Q. Now, he says the fly-wheels would be difficult of removal and two of them have been cracked and have had steel bands shrunk on, and if new fly-wheels would be made the cost would be \$160. What would you say as to that?

A. In the first place, they don't need new fly-wheels; in the second place, if the hubs are cracked it would make them easier to remove; the hub had a band shrunk on, but there is no bands that I know of shrunk on the fly-wheels.

Q. He says that nearly all of the studs have been loosened by the action of the salt water and will screw out easily and in some cases the casting is hardly thick enough to stand retapping. Is that correct?

A. I don't know, as I never saw the engines after I took them over to the dredge; that is, I have never examined those studs.

Q. He says that new studs and retapping would cost \$20.

A. That is a small item. I do not think it would cost that much.

Q. The valve gear, he says, is so worn and rusty as to necessitate its entire replacement. Do you know anything about that?

A. It is not so. There is a little surface rust on there that don't interfere with the running of the engines, and I don't see why they should be all replaced by new ones.

(Testimony of W. J. Knight.)

Q. When did you see any part of the valve gear last? A. Last Tuesday.

Q. What did you see?

A. I saw the valve chamber, the exhaust valves, exhaust springs, cams, inlet valves, springs.

Q. Those are all visible— A. All visible.

Q. (Contg.) —from an outside view of the engines, are they? [350]

A. With the exception—just the valve stem you can see; the body of the valve is inside the chamber.

Q. What part of the valve gear can you not see from the outside?

A. Just the seat of the valve and the valve itself.

Q. You can't see the seat of the valve or the valve itself? A. You can't see inside of the chamber.

Q. Then, how can you say that the valve gear is not so worn and rusty as to necessitate its entire replacement when you can't see it?

A. Because they will move. If there was—

Q. Had you finished?

A. (Contg.) —rust they would be rusted fast so you could not move them at all.

Q. Upon that you base your answer, because they move, you know that they are proper, they are all right? A. That portion that I could not see, yes.

Q. How did you move them?

A. With my hand.

Q. With your hand? A. Yes.

Q. He said 12 valves and parts would cost \$120. Do you know anything as to the value of those re-

(Testimony of W. J. Knight.)

pairs that would have to be made on a dredger such as this?

A. The valves and parts would cost \$120.

Q. 12 valves and parts. How many valves did you see?

A. I could see six exhaust valves, and I could see six inlet valves, the stems of them.

Q. You could see the stems of 12 valves, could you?

A. Yes.

Q. You could not see the valves themselves or the valve seat. A. No.

Q. The only thing you could see was the stem?

A. Yes.

Q. And the stem was not worn out? A. No.

Q. Did you ever have anything to do with the repairing of Samson [351] gas engines except these engines on this dredger "Richmond No. 1"?

A. No, sir.

Q. Do you know anything as to the cost of parts for the repair of Samson gas engines?

A. I think the crank-shaft and the base case—well, I am not quite sure, but I think the crank-shaft cost \$175 new the time we broke it.

Q. It cost \$175? A. Yes.

Q. For replacing a crank-shaft? Yes.

Q. Did that include installing?

A. I don't think that included installing.

Q. The installing was in addition to the \$175?

A. Yes.

Q. How much did the installing cost, do you remember?

(Testimony of W. J. Knight.)

A. Well, it depends on how much time we lost.

Q. How much did the installing cost?

A. We done it ourselves.

Q. You did it yourselves? A. Yes.

Q. How long did it take you?

A. After we got it fixed it did not take us any more than twelve hours.

Q. And the dredger, had she been operated, would have been earning between \$30 and \$60 an hour, would she not? A. I don't know.

Q. So, in addition to the \$175 for the crank shaft it cost about \$300 for loss of operating; is that right, Mr. Knight?

Mr. LILLICK.—I object to that question on the ground Mr. Knight has said he did not know what the dredger was earning.

A. I don't know.

Mr. TAUGHER.—Q. Do you know of any one hour the dredger was operated on any of those jobs that she earned less than \$30?

A. I don't know of it; I don't remember.

Q. Now, he said the cams would cost \$100.

A. The cams are all in good condition; we could see them. [352]

Q. The cams are all in good condition?

A. Yes; don't show any marks of wear.

Q. When Mr. Musladen testified that those engines would need new cams, he was mistaken, was he? A. I believe so.

Mr. LILLICK.—Q. You will bear in mind, Mr.

(Testimony of W. J. Knight.)

Knight, that this examination was made on October 11th, 1910.

(A recess was taken until 2 P. M.) [352¹/₂]

AFTERNOON SESSION.

W. J. KNIGHT, cross-examination resumed.

Mr. TAUGHER.—Q. What repairs were made on the Samson gas engines after they were taken from the warehouse of the Point Richmond Canal & Land Company in the latter part of January, 1911?

A. I don't know.

Q. Mr. Musladin, in his testimony said that "The cylinder head castings are thin and rusted away around water outlet, making it impossible to maintain a water-tight joint." Is that correct?

A. There is only one outlet on the cylinder heads and that is in good condition.

Q. How big is that outlet?

A. One engine I think is an inch and a quarter pipe, and the other is a cast-iron pipe.

Q. Are those the cylinder heads?

A. On top of the cylinder heads. That is the only one outlet there is.

Q. He said, "Cylinder head castings are thin and rusted away around water outlet, making it impossible to maintain a water-tight joint."

A. That is the only one outlet I know of, on top of them cylinders.

Q. In what condition are the cylinder-head castings? A. Good condition.

Q. He says they are thin and rusted away around water outlet.

(Testimony of W. J. Knight.)

A. They are not rusted around the water outlet. I don't remember of having any trouble in maintaining a water-tight joint.

Q. Water used to get into the firing-chamber on those engines right from the time you commenced using them on Lake Merritt, didn't they?

A. That never came from the water outlet.

Q. Where did it come from?

A. From the passages between the cylinder and the cylinder head. [353]

Q. From the passages between the cylinder and the cylinder head? A. Yes, sir.

Q. That is how the water got into the firing-chamber? A. Yes, sir.

Q. How long after you commenced operations in Lake Merritt, did you have your first trouble with water getting into the firing-chamber?

A. I don't remember, but very soon after I took charge of the machine.

Q. Mr. Musladin said that the necessary parts to make the cylinder head castings in good condition would cost \$20, material \$20 and labor \$100.

A. Does he mean material for six cylinder heads?

Q. I presume so.

A. And they are all ate away?

Q. All in such condition that it would be impossible to maintain water-tight joints as they were on the date of his examination on October 10th, 1910.

A. I do not see where it requires any more material unless you get new cylinder heads, and you cannot get them for \$20—six of them.

(Testimony of W. J. Knight.)

Q. "Parts \$20; material \$20; labor \$100."

A. It is to replace the cylinder heads.

Q. That would be \$140 that they would charge for doing the work. The whole cost of doing it would be \$140. A. But the material is only \$20.

Q. That is, the material to the shopman?

A. There is no material in that. All you have to do is to face off the cylinder heads, unless he gets new cylinder heads, and you could not get them for \$20.

Q. Could you get the six for \$140?

A. You could, but that would not include labor.

Q. It would not include labor? [354]

A. It would not include machine work.

Q. He says "Crank brasses will need refitting. Also piston brasses." What have you to say to that?

A. The crank brasses and piston brasses were refitted during the time we were running the dredge by electric motor in Eureka, and from that I do not think the engines ran over two weeks after that. I do not see why they should require refitting.

Q. When did you see those crank brasses last?

A. Some of them last Tuesday.

Q. Which of those could you see from that inspection that you made?

A. The end ones between the two engines.

Q. You could see those? A. Yes, sir.

Q. You could see that one, rather?

A. Yes, sir, I could see that one.

Q. How many are there on those engines that you could not see? A. Three of them.

(Testimony of W. J. Knight.)

Q. How many piston brasses are there?

A. Six of them.

Q. How many of those that you could see from the inspection, from the outside?

A. You could not see any of the piston brasses.

Q. You could not see any of the piston brasses?

A. Yes, sir.

Q. Then, you do not know in what condition they are in?

A. Only from my own judgment that I do not see how two weeks' wear could wear them out.

Q. He says, "All piping is practically useless"; is that correct?

A. I don't see what would make it useless, only the action of the salt water on the surface lines, the piping on the inlet, the gasoline—I don't know what would make it useless. I don't see why it would not last forever. I do not see what would wear it out.
[355]

Q. He says "Valve chamber castings are eaten away around water passages, and exhaust valves are worn out, and it would cost \$220 to replace those as it should be done to make a first-class workmanlike job of it." What do you say to that?

A. I think his prices are too high, even if they were wore out, which they are not.

Q. 30 piston rings are needed worth \$60. What do you say as to that?

A. His price is too high, and I do not think they need 30 piston rings. I think they take four rings to the cylinder.

(Testimony of W. J. Knight.)

Q. He evidently counts 5 when he says 30. Are you sure it does not take 5? A. I don't think so.

Q. He estimates the cost of cartage and freight from where the engines were at the Point Richmond Canal & Land Company's Warehouse to the shop at \$100?

A. That would be all right including launch hire from Richmond probably.

Q. Machinist's time at Richmond \$100.

A. What is the machinist supposed to do at Richmond?

Q. I imagine that is in addition to the knocking down and assembling.

Q. He says "Knocking down and assembling \$600." Is that a reasonable charge?

A. I think it is out of reason.

Q. You think it is out of reason? A. Yes, sir.

Q. Were you ever, while you were working for this concern 12 years ago, ever sent to knock down a gas engine, or to reassemble one?

A. When I was working for the Miners' Iron Works?

Q. Yes. A. No, sir.

Q. Did you ever in all your experience have occasion to knock down an engine, such as one of these Samson gas engines were, and afterwards reassemble them and start them going? [356]

A. I have knocked one of those Samson engines down when the crank-shaft was broke.

Q. Only sufficient enough to remove the crank-shaft? A. The crank-base was broke too.

(Testimony of W. J. Knight.)

Q. You only dismantled a sufficient part of that engine, to permit you to take those parts away to be repaired? A. That meant pretty nearly all of it.

Q. Mr. Musladin estimated that the testing of those engines after they were reassembled and started would be worth \$100.

A. He must not have very much faith in their own work if he wants to spend \$100 in testing those engines. If they do good work two hours running time ought to be sufficient to test the engines after they are reassembled.

Q. After they are assembled don't they always need considerable adjusting?

A. Just the matter of the mixture and the igniter, or the carburetor and the spark.

Q. He said six igniters would be necessary on there at \$12 each?

A. I think you could get the igniters from the Samson engine people for less than that.

Q. Now, how much would you say those engines were worth when you took them off of the dredger "Richmond No. 1" on the Alameda job, in money?

A. About \$1,500 apiece.

Q. They were worth \$1,500 apiece then?

A. Yes, sir.

Q. How much were they worth when they were new?

A. I don't know. I would not give over \$2,000 apiece for them.

Q. But you are willing to testify that you would give \$1,500 if you wanted to buy gas engines of their

(Testimony of W. J. Knight.)

capacity 75 horse-power, that you would pay \$1,500 apiece for those engines at the time you took them off the dredger "Richmond No. 1" while performing the Alameda job?

A. Yes, sir. If I had use for the engines I think I would give that much for them. [357]

Q. How much are they worth now?

A. I think about \$1,500.

Q. They are worth about \$1,500? A. Apiece.

Q. You think they are worth as much now as when they were taken off of the Alameda job, do you?

A. I don't see why they should not be.

Q. When you went over to look at those engines on Tuesday, you only looked at the outside of the engines, did you not? A. Just as far as we could see.

Q. You do not mean to say that you could tell anything as to the condition of those engines, or that you could say—I will withdraw that part of the question. Those engines were recently painted, were they not?

A. I think they were the first of this year.

Q. You do not want us to understand that you could tell from looking at the outside of those recently painted gas engines, whether or not they would operate?

Mr. LILLICK.—We object to the question upon the ground that it has been answered at least twice before by this witness.

Mr. TAUGHER.—I never asked him that question before.

A. I cannot tell whether they have been operated since they were painted.

(Testimony of W. J. Knight.)

Q. Would you be able to tell whether or not they would operate at all from an inspection such as you made over there on Tuesday? A. No, sir.

Q. You could not tell whether or not they would even start at all? A. No, sir.

Redirect Examination.

Mr. LILLICK.—Q. On your cross-examination I understood you to testify, Mr. Knight, that on the Eureka job the utmost [358] horse-power that you used was 200.

A. 200 horse-power on the pump, yes.

Q. During the time that you were developing 200 horse-power on the pump at Eureka, were you using the Samson engines? A. No, sir.

Q. I understood you on your cross-examination to testify that you used the Samson gas engine and deposited 2500 cubic yards a day with them, and that in order to do so that would require 200 horse-power; is that correct?

A. I could not do it with the Samson engines because I was only developing 110 to 120 horse-power.

Q. When you removed the Samson engines and installed the Atlas engines, what was the character of the timbering work as to the temporary or permanent position upon the dredger? A. Temporary work.

Q. During the time that you were working at Lake Merritt, while Betts was engineer, did you ever tell him that he would have to wait until the dredger stopped to move the pipes in order to do any repair work upon the engines?

Mr. TAUGHER.—I object to the question upon

(Testimony of W. J. Knight.)

the ground that it is leading and suggestive.

A. Small things that did not amount to very much we used to probably let go for a little while, that is half an hour or so when we were near to a shut down. Anything that was of importance we generally took right hold of and repaired up right away.

Mr. LILLICK.—Q. Do you know whether upon any occasion, either on the Lake Merritt job or at Eureka, while you were using the Samson engines, that the engines were damaged by not being immediately repaired when it was called to your attention?

A. No, sir. [359]

Q. How many yards a day, if you know Mr. Knight, did you average at Eureka with the Samson engines?

A. I don't know how much averaged for the entire time, but last night I just compared for one week, the last week that we used the Samson engines and the first week that we used the 200 horse-power motor on the pumps to see the difference. The gas engines for an average for the week made 81½ yards per hour. The electric motor for the week displaced 108 yards an hour.

Q. Have you that statement with you?

A. Yes, sir.

Q. Will you let us have it, please?

A. There it is (handing).

Q. From what did you make that statement up?

A. From the daily reports.

Mr. TAUGHER.—I object to any testimony being given concerning the copy he made from the re-

(Testimony of W. J. Knight.)

ports. The reports themselves are the best evidence, which he might easily have brought here.

Mr. LILLICK.—Q. Did you make up those daily reports yourself? A. Yes, sir.

Q. Is the statement you have an exact copy of the daily reports with respect to hours of work?

A. This is an exact copy of the hours run, the yards excavated each day and the dates.

Mr. TAUGHER.—I will ask that the daily reports be produced before you ask any further questions concerning them. The reports are in your possession, and I would ask that the daily reports on those jobs be produced. They will be of material assistance in arriving at the correct solution of the controversy here, and I will ask that the daily reports on all jobs be produced.

Mr. LILLICK.—Q. I will— [360]

Mr. TAUGHER.—I object to any testimony being given from a part of some of these reports.

Mr. LILLICK.—Q. I will ask you Mr. Knight, whether the statement which you have just produced gives exactly for December 11th, 12th, 13th, 14th, 15th, 16th, 17th, the hours run on each of those days and the cubic yards excavated upon each of those days by the Samson engines at Eureka?

A. It is a copy of the original report and is correct.

Q. I will ask you what was the number of hours run for December 11th, and the number of cubic yards excavated on that day by the Samson engines?

A. December 11th?

(Testimony of W. J. Knight.)

Q. Yes.

A. 18 hours and 45 minutes run, 1201 yards excavated.

Q. December 12th?

A. 9 hours and 20 minutes running time, 600 yards excavated.

Q. December 13th?

A. 17 hours and 45 minutes running time, 1801 yards excavated.

Mr. TAUGHER.—I further object to this testimony upon the ground that it is not proper redirect examination.

Mr. LILLICK.—Q. December 14th?

A. 20 hours and 20 minutes running time, 1921 yards excavated.

Q. December 15th?

A. 21 hours and 20 minutes running time, 1501 yards excavated.

Q. December 16th?

A. 23 hours and 15 minutes running time, 1981 yards excavated.

Q. December 17th?

A. 15 hours and 15 minutes running time, 1288 yards excavated. The average in 18 hours per day.

Q. And the number of cubic yards per day averaged? A. I have not got the per day average.

Q. What is the average per hour?

A. The average per hour was 81½ yards. [361]

Q. Do I understand that that is a record of the Samson engines during the last week that they were working at Eureka? A. Yes, sir.

(Testimony of W. J. Knight.)

Q. Have you the record of the first week during which the electric motors were used, which motors were installed on the dredge to take the place of the Samson engines for the purpose of obtaining power?

A. Yes, sir.

Q. Will you tell us what the number of hours were those motors were run on December 19th, 1909?

A. 23 hours and 40 minutes.

Q. And how many yards were excavated?

A. 2254.

Q. Upon December 20th?

A. 23 hours and 35 minutes.

Q. Number of cubic yards excavated?

A. 2576.

Q. December 21st?

A. 18 hours and 55 minutes.

Q. Number of yards excavated? A. 1663.

Q. December 22d? A. 23 hours and 20 minutes.

Q. The number of yards excavated? A. 2933.

Q. December 23d? A. 17 hours and 50 minutes.

Q. The number of yards excavated? A. 2444.

Q. December 24th?

A. 22 hours and 40 minutes.

Q. The number of cubic yards excavated?

A. 2444.

Q. December 25th?

A. 8 hours and 45 minutes.

Q. The number of cubic yards excavated?

A. 733.

Q. What was the average number of hours a day that the electric motor ran? A. 20 hours a day.

(Testimony of W. J. Knight.)

Q. What was the average yardage per hour?

A. 108 yards.

Q. How many more yards an hour were you able to pump with the motor than you were with the Samson engines? A. 26½ yards per hour.

Q. And how many more cubic yards per day of 24 hours running [362] time were you able to make with the motor than you were with the Samson engines? A. How many more yards?

Q. How many more yards?

A. 736 with 24 hours running time.

Q. Were the Samson engines used on the Eureka job at all after December 17th, 1909?

A. December 18th, 1909, was the last day I used them.

Q. And after that time you used them over at Alameda, as I understand it, at the outside, two weeks? A. Yes, sir.

Q. I hand you a bill from the Eureka Foundry Company, of Eureka, Cal., to the Standard American Dredging Company, South Bay, Cal., and ask you whether or not that is a bill for work done upon the Samson engines during the time that they were at Eureka on the "Richmond No. 1"? (Handing.)

A. The upper portion of this bill is for the Samson engines with the exception of the special coupling.

Q. Will you read that portion of the bill which was for work done on the Samson engines?

A. Boring out 56-inch pulley; shrinking band on hub; putting in bushings; turning crank-shaft and fitting pulley on same, \$68.70. Launch hire to South Bay, \$4.00, and the rest of it is for the

(Testimony of W. J. Knight.)

“Richmond” but is not for the engines.

Q. I hand you a bill from the Risdon Iron & Locomotive Works, dated May 31st, 1910, and ask you whether or not this is a bill for the work done by the Risdon Iron Works, that you have testified to as having been done on the engines and dredger after the dredger was brought back to San Francisco from the Eureka job? (Handing.) A. Yes, sir.

Mr. LILLICK.—I offer this bill in evidence and ask that it be marked “Knight No. 1.”

(The bill is marked “Knight No. 1.”) [363]

Q. Mr. Knight, I will ask you to read into the record those particular items which are for repairs upon the Samson gas engines.

A. (After examination.) There are no items for the gas engines here.

Mr. LILLICK.—I will withdraw that exhibit.

Q. Referring to the estimate of Mr. Musladin for the repairs on those engines from his examination of October 11th and 12th, 1910, I will ask you to state your opinion in a general way of what you think of those items and the estimates.

Mr. TAUGHER.—I object to the question upon the ground that Mr. Knight has stated himself he is not an expert gas engine man and that his opinion is of no consequence, and is inadmissible for any purpose whatever, and irrelevant and incompetent.

A. He has got “5 days taking old crank-shafts” which I think is out of reason, as I have taken out a crank-shaft when we broke one in Lake Merritt, in less than a day, I believe. When I got the new

(Testimony of W. J. Knight.)

shaft and put it back in place, with a new crank-base, I did it in about 12 hours, or the men did. I think I hurt my foot just about that time, and did not stay there all night.

Mr. LILLICK.—Q. Never mind that part of it. Go on with your answer.

A. "8 days babbitting, boring and scraping"; it should be done in about a day and a half. The babbitting and scraping is assembling work. The 5 days taking out old crank-shafts is knocking down work. He has got here "The fly-wheels would be difficult of removal." If that was the case they must be pretty solid there and do not require new ones. He testifies to the cylinder heads. It seems to me that a good deal of this work is charged for twice. The 5 days taking old crank-shafts [364] is knocking down, and we have got \$600. Over here for knocking down and assembling in a lump. I should judge 7 days of this babbitting and scraping is charged twice. That would be assembling. I don't understand what he means about this hundred dollars for labor "Cylinder head castings are thin and rusted away around water outlet, making it impossible to maintain a water-tight joint." He has got parts here \$20, material \$20 and labor \$100. I don't see what that is for unless it is either for assembling or knocking down. "Crank-brasses will need refitting, labor \$50." That is assembling. He has also got here, "Labor 15 days, valve chamber castings are eaten away around water passages, and exhaust valves are worn out." He gets his parts for \$30, and

(Testimony of W. J. Knight.)

his material—I don't know what he means by his material—and his labor. He has 15 days down. The biggest portion of it must be for assembling and knocking down. He has also got here "Machinist's time \$12 a day." I don't believe there is anybody in San Francisco that charges that price. The average price is 80 cents an hour for a machinist outside of the shop, or on the floor.

Mr. TAUGHER.—Q. That is what the employer pays to the mechanic?

A. No, sir. He pays about \$4.00 a day or \$4.50 a day. That is the maximum wage.

Mr. LILLICK.—Q. Mr. Knight is it not the invariable custom in hydraulic suction dredging to work the dredger night and day?

A. Yes, sir.

Mr. LILLICK.—That is all.

Recross-examination.

Mr. TAUGHER.—Q. How much would it be worth to bore out the engine-pulley, shrink on a band on the hub, put in the necessary [365] bushing, turning off the crank-shaft and fitting the pulley on the same? A. I think it was \$64.

Q. Did that include the knocking down of the engine? A. No, sir.

Q. Who did that?

A. The engineer on the dredger.

Q. This was just for work on that one piece of machinery that was sent to the shop, was it?

A. Yes, sir, but it was large work. That pulley was 56 inches in diameter and it requires a big lathe

(Testimony of W. J. Knight.)

to do the work.

Q. That was a comparatively small job?

A. That was a comparatively small job, but it took a big tool to do the work.

Q. In addition to the charge for doing the work, you had to do all the knocking down and assembling?

A. Yes, sir.

Q. That is a bigger price than any of the estimates of the work that Mr. Musladin figures on, is it not?

A. I don't think so.

Q. What did that electric current cost you per hour in Eureka?

Mr. LILLICK.—Objected to as irrelevant and immaterial and not proper recross-examination.

A. I don't remember what it cost per hour.

Mr. TAUGHER.—Q. What did it cost per day?

A. I don't remember.

Q. What per kilowatt hour?

Mr. LILLICK.—I object to the question as irrelevant and immaterial.

A. I believe it was $1\frac{3}{4}$. I am not quite sure.

Mr. TAUGHER.—Q. How many kilowatt hours would you use per hour in operating the dredger?

Mr. LILLICK.—The same objection.

A. I don't remember.

Mr. TAUGHER.—Q. Do you remember what the electric bill [366] was for doing the work at Eureka? A. No, sir.

Q. Approximately? A. No, sir.

Q. You don't know anything about that?

A. No, sir.

(Testimony of W. J. Knight.)

Q. You avoided looking at that part of the report when you went to look for something last night?

Mr. LILLICK.—I object to the inference in the question and further it is not proper recross-examination.

Mr. TAUGHER.—He was in charge of the work there, Mr. Lillick, superintendent of the work. He can testify to the number of cubic yards that our engines would do, and the number of cubic yards per hour that the motor would do, the motor being 200 horse-power. (Addressing the witness.) And there was an additional 50 horse-power on the cutter, was there not? A. Yes, sir.

Mr. TAUGHER.—If he could tell that those two motors did $26\frac{1}{2}$ cubic yards an hour more than the Samson engines did it is a very reasonable question to ask how much the current cost per hour to do the work.

Mr. LILLICK.—The objection to the question was urged upon the ground that the inference of the question was that Mr. Knight purposely refrained from looking at any other portion of his reports down there, when as a matter of fact he only looked at this particular portion of his reports for the purpose of obtaining this particular information that you asked him to get.

Mr. TAUGHER.—Cannot we have those reports here when we come here next Monday?

Mr. LILLICK.—I have not a doubt in the world that you can have everything in the office.

Mr. TAUGHER.—If you will bring up what the

(Testimony of W. J. Knight.)

electric current cost per hour we shall be enlightened on the point. [367] And further, in view of Mr. Lillick's offer, I will ask that all the reports on all the jobs done by the "Richmond" be produced here so that we can inspect them and obtain such pertinent and material information as we may wish.

Mr. LILLICK.—We refuse to bring up the reports of all those jobs primarily because it is irrelevant and immaterial; secondly, because in the dredging operations, as I understand the reports at the office, there is a daily report of every detail of the business, and it will be simply hopeless to attempt to get anything that will help us out or you in the case, and we do not propose to do it. You have your remedy if you want to get anything, by subpoenaing some officer of the company. I need not point out the way to you.

Mr. TAUGHER.—If the reports are produced here I will discover from them what information I seek, and which Mr. Knight is apparently unable to give, notwithstanding the fact that he was superintendent on all those jobs, and claims he made all these reports.

A. The record of the electric current is not on the reports; that came in in the shape of a monthly bill.

Q. What was the amount of that monthly bill?

Mr. LILLICK.—I object to the question as irrelevant and immaterial.

A. I don't remember. I simply O. K.'d the bills if they were correct and sent them in. I kept tab for that month, only for the current month, and when

(Testimony of W. J. Knight.)

everything was straightened out I just threw the stuff away.

Mr. TAUGHER.—Q. How much per day did the electric motor do? A. 108 yards.

Q. 108 yards per hour? A. Yes, sir.

Q. How much per day?

A. I don't know the average. That is [368] what they did per day right along here, the hours excavated.

Q. In 7 days they did 150,047 cubic yards with the motor. That is slightly less than 2550 cubic yards per day. Just look at that and see.

A. That is it practically, not quite.

Q. It is slightly less than 2150? A. Yes, sir.

Q. Now, subsequent to this week when you kept track of what the motor did, did it do more or less than this amount?

A. I think the average of the entire job would be a little more. That was the entire time we were using the motor.

Q. That is, it was more than 2150?

A. It would average a little more than that, I believe.

Q. Would it average 2200? A. I don't know.

Q. You do not know whether it would average 2200 or not? A. No, sir.

Q. You are sure it would average 2150?

A. I am pretty sure of that.

Q. You told us in your testimony yesterday, that the reason you discontinued using the Samson engines on the Eureka job was that you had to do 2500

(Testimony of W. J. Knight.)

cubic yards a day because there was a forfeit on the contract if you did not do 2500 cubic yards a day, and because the Samson engines would not do 2500 yards a day you put on the motor. Did you not make that statement yesterday? A. Yes, sir.

Q. How do you reconcile making those two statements?

A. The increase on that statement for 24 hours running time between the Samson gas engines and the electric motor was about 736 yards, and if we could do anything like that every 24 hours we would be money in pocket; we would not have to pay so many \$75 a day.

Q. \$75 a day for what?

A. For the average, in other [369] words if we did not turn out for the entire month about 75,000 yards I believe that the company had a forfeit of \$75 a day for every day they did not average 2500 yards.

Q. But you only averaged 2150?

A. That is all right. We had better average 2150 than 1500.

Q. Did you have to shoulder a penalty on that job?

A. Yes, sir.

Q. You had to shoulder a penalty? A. Yes, sir.

Q. About what amount?

A. I don't know. I know we ran behind on that particular score.

Q. Did you have to pay any penalty to the company with whom you were doing that job?

A. I believe the Standard American Dredging Company did.

(Testimony of W. J. Knight.)

Q. Did you anticipate that the motors would do 2500 cubic yards a day?

A. I figured that the motors would do more than the Samson engines.

Q. How much more?

A. This particular time it averaged $26\frac{1}{2}$ yards more per hour.

Q. How much did you estimate that the motors would do more than the engines?

A. I did not make any estimate.

Q. You did not make any estimate?

A. Only on that statement. I made no estimate before the motor was installed.

Q. Did you have anyone make an estimate for you?

A. No, sir.

Q. You put the motor in on the chance that it would do more? A. That is the idea.

Q. You did not figure that it would. Why?

A. We figured it would do more, but we did not know the amount it would do more.

Q. During the last week that the Samson engines were working [370] at Eureka, did they do as much work as they did during the first week?

A. Well, I could not say what they done the first week.

Q. Was their efficiency compared during the last week as compared with the first two or three weeks that you were working on the Eureka job?

A. I never compared it.

Q. You do not know whether they were doing as much on the last week as the first or second or third

(Testimony of W. J. Knight.)

week? A. No, sir.

Q. You cannot say anything as to that?

A. No, sir.

Q. How long did you use them on the Eureka job?

A. A month and 18 days.

Q. You cannot tell anything as to the comparative amount done during the last week, and any other week during that month and 18 days? A. No, sir.

Q. You cannot tell whether their efficiency was less or more than it was during the first week?

A. That would depend entirely on the character of material that we were displacing. If we displaced sand it would be less. If we displaced mud it would be more.

Q. That would not affect the efficiency of the engines at all?

A. No, sir, it would not affect the efficiency of the engines.

Q. That would only affect the output?

A. That is all.

Q. In what kind of material were you working in the last week that you were using the Samson gas engines? A. I think stiff mud and sand.

Q. In what kind of material were you working the first week that you used the motors?

A. The same.

Q. The same material? A. Yes, sir.

Q. Exactly the same kind of material?

A. The same material.

Q. When you installed the two Atlas gas engines on the "Richmond No. 1" at Eureka, did you do it

(Testimony of W. J. Knight.)

in a workmanlike way? [371]

A. I did not install them at Eureka.

Q. At Walnut Grove, I mean. Did you so install them that they would produce their greatest efficiency? A. Yes, sir.

Q. Could you have made a better job of installing them if you tried? A. Yes, sir.

Q. How?

A. By putting in a better foundation or base for them, a cast-iron base instead of a timber arrangement.

Q. How long would it take to get a cast-iron base made to put in there?

A. It would take quite a long time. It would take an awful large pattern as we had to swing between those two engines a 56-inch diameter pulley.

Q. But so far as it could be done with timbers you did it as effectively as it could be done?

A. Yes, sir.

(An adjournment was here taken until Monday, October 23d, 1911, at 10 o'clock A. M.)

[Endorsed]: Filed Nov. 15, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk. [372]

Testimony Taken Before Jas. P. Brown, U. S. Commissioner.

Monday, October 23d, 1911.

[Testimony of Claude Cummins, for Respondent.]

CLAUDE CUMMINS, called for the respondent, sworn.

Mr. LILLICK.—Q. What is your name, age and residence?

(Testimony of Claude Cummins.)

A. My name is Claude Cummins; age, 39; present residence, Long Beach, Los Angeles County, Cal.

Q. What is your occupation?

A. Manager of the Standard American Dredging Company.

Q. How long have you been engaged in the dredging business? A. About 15 years.

Q. Where?

A. I was connected with the San Francisco Bridge Company under the New York Dredging Company's management first in St. Louis in the construction of a dredge for the Mississippi River Commission.

Q. In what year?

A. That was in 1897. Then I came to California under the San Francisco Bridge Company's management, and was here with headquarters at San Francisco until about 1900. Then I went to Seattle with the same people except that it was under the name of the Puget Sound Bridge & Dredging Company up there, a separate corporation entirely, and was there until 1904. Then I went to the Gulf States, representing the North American Dredging Company in charge of their work on the Atlantic and Gulf coast. I returned to the Pacific Coast and became manager for the Standard American Dredging Company about two years and a half ago.

Q. During that period what various positions have you occupied in the various companies in which you have worked?

A. Everything on and about a dredge from oiler up.

(Testimony of Claude Cummins.)

Q. From the time you first commenced operations with the San Francisco Bridge Company was the work confined to dredging or what? [373]

A. Dredging or building dredges, or land reclamation; dredging work of some form or another.

Q. What position did you occupy with the Standard American Dredging Company on the 26th day of February, 1910? A. I was manager.

Q. Mr. Cummins, I hand you a document dated the 26th day of February, 1910, which is the document, a copy of which is attached to the second amended libel on file in this case, marked Exhibit "A" in said libel, and ask you whether or not you are the Mr. Cummins who signed the document for the Standard American Dredging Company (handing)? A. Yes, sir, I am.

Q. Will you read the subdivisions of that agreement marked 9 and 10 and state what if anything was said by you or Mr. Connor, or Mr. Cutting, or Mr. Wernse, about those particular paragraphs of the agreement at the time the agreement was signed?

A. Paragraphs 9 and 10?

Q. Yes. A. Do you want it read aloud?

Q. No, read it to yourself.

A. I should like to ask a question first before I answer it. Do you want at this time the entire conditions leading up to the making of this charter?

Q. The entire situation leading up to the making of the charter covering those two clauses?

A. I returned to San Francisco sometime along about the month of February, having been away two

(Testimony of Claude Cummins.)

or three weeks up the coast at Eureka and Coos Bay. During my absence Mr. Perry had gone to Galveston and other points on the Gulf and on the Atlantic coast. I found on my return that there had been some negotiations and correspondence between the Standard American Dredging Company and the Richmond Dredging Company regarding their using our dredge "Oakland" for some filling work which they were desirous of doing at [374] Richmond, we having at that time their dredge "Richmond" in use at Eureka. We had several conversations between Mr. Cutting and Mr. Wernse of the Richmond Dredging Company, and Mr. Connor and myself of the Standard American Dredging Company, regarding this proposition of chartering the dredge "Oakland." It was represented to us by the gentlemen from Richmond Dredging Company that they had sold large quantities of lots of their properties at Richmond, and that those contracts necessitated certain filling which situation would become very acute by March 1st of that year unless a dredge was either at work, or on the ground. It was also agreed that it was quite probable that the dredge "Oakland" would be more convenient for their work than their own dredge, the "Richmond," which was at Eureka at the time. A charter-party was finally entered into embracing the use by them of our dredge "Oakland," and the retention by us of their dredge "Richmond." The dredge "Oakland" was chartered first for a period of 60 days of 12 hours each, with stipulations that under certain conditions

(Testimony of Claude Cummins.)

the charter might be extended. It was provided in paragraph 9 that there would be about three alternatives at our option—

Mr. TAUGHER.—Q. Are you talking about what the charter-party sets forth?

A. My understanding of the charter-party.

Mr. LILLICK.—Q. I want what was the understanding between you at the time the charter-party was entered into between you, directing your attention to what was said by all parties with reference to these clauses and the alternatives that you are about to go into?

A. My understanding of it was arrived at, as was their understanding of it, by our various conferences on [375] the subject, various negotiations, different charters that were drawn up and modified and so on. We desired to arrange so that if we obtained work on which we could use the "Oakland" we could have the dredge for said work, therefore the charter was so arranged that we could demand the return of the dredge "Oakland" and it would be returned. We had then two other alternatives. We would return the dredger "Richmond" to the Richmond Dredging Company or we would pay them an increased rental of \$50 a day as against the rental stipulated in the charter, of \$800 a month.

Q. What was said, if anything, as to the contingency of the Richmond Dredging Company notifying you that they had used or required the dredger "Richmond No. 1"? A. Nothing.

Q. I call your attention to the language in sub-

(Testimony of Claude Cummins.)

division 10: "And that the said first party shall have the right to lease and use said dredger 'Richmond No. 1' at any time and all periods when not in use or required by the party of the second part until January, 1911." I will ask you if anything was said as to that particular portion of the subdivision.

Mr. TAUGHER.—I object to anything being given in explanation of the language used there upon the ground that the language in that paragraph stated what the agreement was with relation to that, and no explanation can be received to vary what is there written.

A. It was represented to us by the representatives of the Richmond Dredging Company, that they were not in the contracting business, and were not bidding on work outside, and that all the use they had for the "Richmond" was such work as might come up with reference to their own reclamation project at Richmond, and under that representation the 10th paragraph was inserted [376] to give us a first call on their dredge "Richmond" should all other work provided in the charter be completed and the dredge returned to them.

Mr. LILLICK.—Q. At the time the charter-party was entered into was anything said between you with reference to the Atchison, Topeka & Santa Fe work to be done by the Richmond Dredging Company?

A. No, sir.

Mr. TAUGHER.—Q. Nothing was said as to that? A. Nothing was said as to that.

Mr. LILLICK.—Q. Did you know anything about

(Testimony of Claude Cummins.)

the Atchison, Topeka & Santa Fe work at that time?

A. I knew that they had contemplated certain filling.

Q. By "they" who do you mean?

A. The Atchison, Topeka & Santa Fe, and from our records knew that we had made an estimate for them some months before on this filling.

Q. Did you know at that time that the Richmond Dredging Company were figuring on doing the job?

A. I did not.

Q. Was anything said to you by any of the officers of the Richmond Dredging Company about their intention to figure on it at the time this agreement was entered into? A. No, sir.

Q. How long was the possession of the "Oakland" in the Richmond Dredging Company?

A. From about the date of the charter until about the middle of August.

Q. How much material from your knowledge of the dredger "Oakland" could have been pumped in that time of the character of the material at Richmond?

A. If they had excavated the soft material only the dredge should reasonably have done three-quarters of a million yards.

Q. Why do you say if they had dredged the soft material only?

A. Because that was the understanding arrived at with the [377] representatives of the Richmond Dredging Company as to what the dredge was to be used for.

(Testimony of Claude Cummins.)

Q. What do you mean by "understanding"? Was anything said about it? A. Yes, sir.

Q. By whom?

A. By the representatives of the Richmond Dredging Company and by myself.

Q. What representatives of the Richmond Dredging Company? A. Mr. Wernse in particular.

Q. What did he say?

A. He said that they did not expect to try to dig the clay, but only expected to dig the soft material overlying the clay.

Q. Was anything said at that time as to what they were going to do with the material?

A. He said that they expected to put it on the lands and streets in the area being handled by the Richmond Canal & Land Company.

Q. What was said, if anything, at that time, with respect to running the "Oakland" more than one shift a day?

A. The first provision of the charter was that they could use her for sixty days at 12 hours per day, as I remember now, and that after that if we asked them to, they would put on two shifts and operate 24 hours a day provided they still used the dredge.

Q. Who made the representations to you with regard to the necessity for their having a dredge by March 1st? A. Mr. Wernse in particular.

Q. What did he say about that?

A. He said that they had sold many lots on partial payments and that the situation would become very acute. That is the substance of his position about

(Testimony of Claude Cummins.)

March 1st, unless the dredge was on the ground either actively engaged in filling or in getting ready to fill. [378]

Q. Did Mr. Cutting at any time ever say anything to you about the character of the material that they desired to cut and discharge with the "Oakland"?

A. I don't remember that he did prior to the date of the charter. I don't remember whether he did or did not.

Q. Do you know when Mr. Perry left San Francisco?

A. Not exactly; it was some time not far from the 1st of February.

Mr. TAUGHER.—Of what year are you talking?

A. The same date as this charter-party—the same year as the charter-party, 1910.

Mr. LILLICK.—Q. Do you know whether Mr. Perry was in San Francisco on the 4th of February, 1910? A. I do not.

Mr. TAUGHER.—Mr. Perry has his books—

Mr. LILLICK.—Do you want this in the record?

Mr. TAUGHER.—Yes—that he used on his examination, giving the details of all his movements.

Mr. LILLICK.—Is this a question?

Mr. TAUGHER.—No, it is an interjection or whatever you want it to be. It is for your enlightenment as to where Mr. Perry was during any of this time. He testified on his cross-examination.

Mr. LILLICK.—You can write that if you like and hand it to me. I do not see the purpose of having it go in the record.

(Testimony of Claude Cummins.)

Q. Do you know anything about the condition of the Samson engines that were on the "Richmond No. 1," at the time the "Richmond" was rented from the Richmond Dredging Company?

A. No, sir, I was not here.

Q. Do you know whether or not any motors were installed on the dredge "Richmond No. 1" at Eureka, while the work was being done at Eureka?
[379]

A. Yes, sir, there were two, a motor to run the cutter and a motor to run the pump.

Q. Do you remember a conversation at Mr. Cutting's office at which Mr. Cutting, Mr. Wernse, you and Mr. Connor, were present, in which those matters were discussed? A. I do.

Q. About when was that? Do you remember?

A. I think it was some time during the negotiations for the use of the dredge "Oakland" when we were discussing the negotiations.

Q. What was that conversation?

A. Mr. Cutting asked me what we used at Eureka. I told him. He asked me how the motors worked. I told him.

Q. What do you mean by what you were using?

A. In the way of motive power to drive the machinery.

Q. What did you tell him?

A. I told him that we had a 50 horse-power motor on the cutter, and about a 200 horse-power motor on the pump, and that they were giving us good service. He stated that they would probably like to

(Testimony of Claude Cummins.)

obtain those motors when we finished with the dredge as they had a power-line very convenient at Richmond and the gas engines had never given them enough power to drive pump and cutter, and if the motors were all right for the job they would probably want to arrange to get them.

Mr. TAUGHER.—To what is this testimony pertinent? How is this testimony pertinent to any of the issues here?

Mr. LILLICK.—You can object to it if you think it is immaterial.

Q. Mr. Cummins, do you know the dredger "Uncle Sam"?

A. No, sir; not well enough to tell you very much about it.

Q. Do you know her well enough to say whether or not she is [380] of the same construction as the dredger "Richmond No. 1"?

A. The "Uncle Sam" at present is a clam-shell dredge. She was originally a hydraulic dredge.

Q. Do you know whether at the time she was a hydraulic dredge she was doing work up near Stockton? A. I do not. I was never aboard of her.

Q. You do not know whether she was the same character of dredge during the time she was hydraulic that the "Richmond No. 1" is?

A. Not to my personal knowledge.

Q. What do you consider the reasonable rental value of the "Richmond No. 1" is from your experience with dredgers? A. About \$750 a month.

Q. Upon what do you base that?

(Testimony of Claude Cummins.)

A. On the fair valuation of the dredge, and the returns that that rental would give you a year as compared with the fair valuation of other dredges that have been chartered, where I have been more or less familiar with the price paid.

Q. During your experience in dredging, Mr. Cummins, approximately about how many charters for dredgers have you made?

A. Very few myself, but companies I have been connected with have chartered quite a number.

Q. From your position in the companies at various times when these charters were made, do you know of the prices paid for the dredgers? A. Yes, sir.

Q. What, if you know, is the usual method of figuring upon the reasonable rental value of the dredge?

A. I will answer that by saying that charters of dredgers that I have been familiar with have usually run about 25 to 30 per cent of a fair valuation of the dredge per year. For instance, an eighty thousand dollar dredge would be chartered for [381] about \$2,000 a month. I know of one dredge of the contract cost of \$85,000 that was chartered for a period of more than five years at \$500 a month. This was a 20-inch hydraulic dredge, but this is exceptional, and there were circumstances which made it exceptional.

Q. Can you give any other examples of dredgers worth from \$30,000 to 40,000, with the rental value?

A. We have just had chartered at San Pedro for a period of six months, a clam-shell dredge valued

(Testimony of Claude Cummins.)

at \$25,000, for which we paid \$300 a month.

Q. Can you think of any other examples?

Mr. TAUGHER.—I object to this line of testimony upon the ground that it does not show anything as to the rental value of the “Richmond No. 1,” and does not even offer any basis by which the rental valuation of the “Richmond No. 1” might be fixed.

A. Not at present.

Mr. LILLICK.—Q. Meeting the objection of counsel as to the rental value of the dredger No. 1, in explanation of your estimate of \$750 being a reasonable valuation, what have you to say?

A. I think that \$30,000 is a reasonable and liberal valuation of the dredge “Richmond No. 1”—

Mr. TAUGHER.—Q. That is, with the old engines on board, is it, or without any engine at all?

A. Am I to answer that?

Mr. LILLICK.—Q. Certainly.

A. That is in the condition in which we received the dredge and operated it. 30 per cent on this would be \$9,000 a year, which would be \$750 a month.

Q. You know, do you not, that the Standard American Dredging Company have rented the dredger for a period of months before [382] this at a much higher valuation?

A. Yes, sir, I know of it from our records.

Q. Have you any explanation as to why the company paid more than what you say is the reasonable valuation?

Mr. TAUGHER.—I object to that upon the ground that the contract price of the “Richmond”

(Testimony of Claude Cummins.)

was fixed by those parties, and any evidence that this question is likely to bring forth would be absolutely immaterial in fixing the value.

Mr. SPILMAN.—It is to meet Mr. Cutting's testimony as to why he was so liberal in renting it to the Standard American Dredging Company at that figure.

A. I think that the amount of this charter was regulated in a great degree by the fact that it was about the only plant suitable to be taken overland into Lake Merritt.

Mr. LILLICK.—Q. Do you know whether the California Reclamation Company ever rented the dredger "Richmond No. 1"?

A. Only from our records I know.

Q. Are you an officer of the California Reclamation Company? A. Yes, sir.

Q. What officer? A. Vice-president.

Q. Do you know what price was agreed upon in the agreement under which the California Reclamation Company had the "Richmond No. 1"?

A. Not to my personal knowledge. I was not in California at the time.

Q. Do you know whether or not the California Reclamation Company chartered the dredger "Richmond No. 1" from the Richmond Dredging Company for use at San Rafael?

A. I know from our records that they did have the dredge chartered.

Q. Do you know whether the Standard American Dredging Company ever had her chartered for work

(Testimony of Claude Cummins.)

at San Pedro?

A. No, sir, I don't think they ever did. [383]

Q. Don't you know, Mr. Cummins, whether the California Reclamation Company used the dredger "Richmond No. 1," at San Rafael?

A. Simply from the records, I do. I was not in the state at the time.

Q. But you do know she was used? A. Yes.

Q. I show you a contract dated April 15, 1908, between N. Ellery, state engineer, party of the first part, and California Reclamation Company for the improvement of San Rafael Creek. Is that the contract for the performance of which the California Reclamation Company chartered the dredger "Richmond No. 1" from the Richmond Dredging Company? A. I think so.

Mr. TAUGHER.—I object to that question on the ground the witness has stated heretofore that he was not in California when that was made, does not know anything about it, except as the records of the company tell him something; that is his only information

A. I think this is the contract.

Mr. LILLICK.—Q. Don't you know that is the contract? A. I have not read it through.

Q. Read it.

A. This is a contract between the State of California and the California Reclamation Company on which I understand, without having been on the job, that the dredger "Richmond" was used by the California Reclamation Company.

(Testimony of Claude Cummins.)

Mr. LILLICK.—We offer that in evidence; that is, the contract portion of it; and ask that it be marked Cummins' Exhibit No. 1.

Mr. TAUGHER.—We object to its introduction in evidence as immaterial, irrelevant and incompetent to any issue in this case.

(The document is marked "Cummin's Exhibit 1.")

Mr. LILLICK.—Q. Mr. Cummins, did the Standard American Dredging [384] Company have any interest in or connection with that contract or with the charter of the dredger "Richmond No. 1" for use at San Rafael under that contract?

A. No, sir.

Q. Mr. Cummins, did the Standard American Dredging Company ever have possession of the dredger "Richmond No. 1," prior to the work which was done by it in Lake Merritt? A. I think not.

Q. Don't you know whether they did or not?

A. I was not in the State.

Q. You are advised, are you not, as an officer of the corporation as to the various contracts entered into by the corporation from time to time.

A. Yes. That was prior, however, to my becoming an officer of the corporation.

Q. When did you become an officer of the corporation? A. About June, 1909.

Q. Do you know what is known as the Key Route Basin work which is now being done over on the Oakland side? A. Yes.

Q. Are you acquainted with the hydraulic portion of the work? A. Yes, fairly well.

(Testimony of Claude Cummins.)

Q. And that particular portion of it which was advertised in January, 1911, or about that time?

A. Yes, fairly well.

Q. What is the character of the work being done over there?

A. Well, the hydraulic portion of the work will be quite difficult dredging; there is a great deal of hard material there, and there is a good deal of it that has to be pumped a long way, either one or the other; it is a long pipe line or hard digging, most of it.

Q. And approximately how much material is to be handled in that work.

A. Oh, at least 3,000,000 yards, I believe. The contract requires a monthly output of 200,000 yards, a minimum monthly [385] output of 200,000 yards.

Q. Do you know whether in the specifications which were attached to the notice for bids for that work the amount of work which you have just mentioned was stated. A. It was.

Q. Is there any possibility, Mr. Cummins, of a dredge of the size of the dredge "Richmond No. 1," being used in that character of a job?

A. There is not the most remote possibility of her fulfilling the output requirement, 200,000 yards per month.

Q. From your knowledge of the dredger itself, can you say whether the dredger could do the work?

A. She would not get 200,000 yards of the hard material in eight months.

(Testimony of Claude Cummins.)

Q. Why not?

A. She is not strong enough, not big enough, and has not power enough.

Q. Mr. Cummins, do you remember during the time you were negotiating prior to the signing of the agreement under date of February 26, 1910, having had a conversation with Mr. Cutting in which he said, "There is one thing that has got to be absolutely certain in that and that is that we must have a dredger until we have done all the work we want to do at Richmond, and this charter-party has got to say that we can have the 'Oakland' or the 'Richmond.' "

A. No, sir. The gist of the charter and positive and impressed requirement was to have a dredger on the work on March 1st.

Q. At any conversation had between Mr. Cutting and yourself prior to signing of the contract dated February 26, 1910, was anything said by Mr. Cutting about desiring to do 400,000 cubic yards of work?

A. The quantity of work and the particular stipulations were mainly talked over with Mr. Wernse, and the quantity of 400,000 yards was put in as a maximum of what they might like to fill on their lands. [386]

Q. Before entering into the agreement, did you at any time—

A. Is that question sufficiently answered?

Q. I want a full answer.

Mr. SPILMAN.—Q. If you have not finished you are entitled to finish it?

(Testimony of Claude Cummins.)

A. I do not recall that a specific conversation was had with Mr. Cutting on this subject of the 400,000 yards.

Mr. LILLICK.—Q. Did you prior to February 26, 1910, ever visit the land at Richmond about which you talked with Mr. Wernse?

A. Yes, some months prior to that time.

Q. Did you go over the situation at that time with Mr. Wernse and discuss it as to the amount of work that would be required to do the filling at Richmond?

A. Yes. We were negotiating with them to put the dredger "Oakland" on the work and do the land and street filling that they desired to do and take part payment in money and part in land, and in the course of these negotiations Mr. Wernse and I went over the channel area with a boat and a sounding rod to determine whether we thought sufficient soft material could be obtained above the clay line to do the necessary land filling that they desired.

Q. Was anything said at that time or subsequently about filling in at Richmond with hard material.

A. Yes, it was discussed, and I told him that I thought it was far better to use the soft material as the cost of pumping the clay would be very much greater, and they wanted to do as cheap a job as possible.

Q. What was said about the amount of material to be pumped there, if anything was said, about the yardage?

A. I do not remember what was said in regard to that question except that in a general way we de-

(Testimony of Claude Cummins.)

cided that there was enough soft material by using a fairly long line to fill the lands they [387] desired to fill.

Q. Was anything said with reference to the proportion to be used upon the streets and the proportion to be used upon the blocks to be filled?

A. I don't recall that there was. It was Mr. Wernse's idea that the pipe-lines would be run along the streets so that the harder material would tend to pile up on the streets and give the street area the advantage, leaving the softer material to run on to the lots and blocks.

Q. Referring to the Atchison, Topeka and Santa Fe job, Mr. Cummins, do you remember ever having been told either by Mr. Cutting or Mr. Wernse that they were figuring upon the job or had it?

A. Not prior to the signing of the charter-party.

Q. Was anything said at that time about the ability of the "Oakland" to handle the hard material?

A. During the various negotiations with the Richmond Dredging Company regarding the filling on their lands the advisability of handling only soft material was thoroughly discussed.

Q. Mr. Cummins—and Mr. Reporter, just note that this document has been brought in by a boy from Mr. Cummins' office—I hand you this document and ask you whether upon it is the signature of Mr. Perry?

A. Yes, that is Perry's signature, all right.

(A recess was taken until 2 P. M.) [388]

(Testimony of Claude Cummins.)

AFTERNOON SESSION.

CLAUDE CUMMINS, direct examination resumed.

Mr. LILLICK.—Q. Mr. Cummins, I hand you a document dated June 23d, 1908, and ask you whether or not it is the agreement entered into between the California Reclamation Company and the Richmond Dredging Company, for the rental of the dredger "Richmond No. 1," for the work at San Rafael? (Handing.)

A. It is signed by Mr. Perry, President of the company and is as far as I know.

Mr. LILLICK.—I offer that in evidence and ask that it be marked Cummins Exhibit No. 2.

Mr. TAUGHER.—I object to the introduction of that in evidence upon the ground that it is incompetent, irrelevant, immaterial and nothing to do with any of the issues in this case.

Mr. SPILMAN—Do you make any point about the genuineness of that paper, or will you admit it is the original paper?

Mr. TAUGHER.—I make the objection to its introduction in evidence. I do not know anything about the balance of it.

Mr. SPILMAN.—We may have to further identify it.

Mr. LILLICK.—To save proof of Mr. Cummin's signature, are you willing to admit Mr. Cutting, that that is your signature and is the original paper and document? (Handing.)

Mr. CUTTING.—That is the original document all right.

(The paper is marked “Cummins Exhibit No. 2” and is as follows:)

[Cummins Exhibit No. 2.]

“CALIFORNIA RECLAMATION CO.

Harbor Improvements and Levee Building,
Land Reclamation.

722 Merchants Exchange, San Francisco. [389]

R. A. Perry, President,

W. A. H. Connor, Vice-President.

June 23rd 1908.

California Reclamation Co.

Gentlemen.

We will lease you the suction dredge ‘Richmond’ together with about 1,000 feet of land pipe, about 400 feet of pontoon pipe and with all other pontoons and equipment belonging to said dredge for the sum of Two thousand Five hundred (\$2500.00) dollars for such length of time as is necessary for the completion of the San Rafael contract but not to exceed two months’ time. This offer to hold good for ten days, from June 25th, 1908.

It is, however understood and agreed that the California Reclamation Co. does and will hold the Richmond Dredging Company harmless from any and all suits for damages for infringement of patents while the said dredge is in our employ.

The California Reclamation Co. to take the dredge from the place where it now is, and to return same to that place upon the completion of this work in the

same order and condition as received, ordinary wear and tear excepted.

Valuation of dredge is thirty-five thousand dollars.

In case dredge is destroyed by fire the California Reclamation Company are not to be held responsible for said loss or damage to said dredge.

Dredge to be delivered as soon as option is exercised.

RICHMOND DREDGING COMPANY,

By H. C. CUTTING, Pres.

CALIFORNIA RECLAMATION CO.,

By R. A. PERRY, President.

In consideration of above we agree to put dredger Oakland and outfit into the Richmond Canal within one week after dredger Richmond is taken out and keep it there for at least 30 days at our own expense allowing \$50.00 for tow-in. Richmond Dredging Co. to stand any additional expense of tow-in.

CALIFORNIA RECL. CO.,

By R. A. PERRY, President." [339½]

Mr. LILLICK.—Q. During your examination this morning, Mr. Cummins, you testified that during the negotiations between you and the officers of the Richmond Dredging Company several proposed agreements were written up. I will ask you whether or not the document that I hand you is one of the proposed agreements between the two parties which you have obtained during the noon hour from Mr. Spilman? (Handing.) A. Yes, sir.

Mr. TAUGHER.—Is that one of the draft charter-parties? A. Yes, sir.

Mr. LILLICK.—Q. Do you remember whether or

(Testimony of Claude Cummins.)

not that is the last proposed draft of the agreement, which was drawn up before the final agreement, dated February 26th, 1910, was signed.

A. The first few pages seem to be absolute duplicates of it.

Q. What would you say as to whether it was the last proposed agreement before the agreement of February 26th, 1910, was executed?

Mr. TAUGHER.—He has not said that he knows that this is the last. A. Yes, sir.

Mr. LILLICK.—Q. Do you know that that is?

A. I am almost positive of it. It is an exact duplicate of it.

Q. By an exact duplicate what do you mean?

A. I mean the little typographical errors that are in one are in the others.

Q. On what pages?

A. You will find them on the first page and second page, showing that they were written on the margin at the same time that they were copied, at the same setting of the machine.

Mr. LILLICK.—We offer this draft in evidence and ask that it be marked Cummins Exhibit No. 3.
[390]

Mr. TAUGHER.—I object to the introduction of this document upon the ground that it is incompetent, irrelevant, immaterial, never was executed by the parties, and never shown to have been submitted to the Richmond Dredging Company, and not shown to have ever been seen by any officer of the Richmond Dredging Company.

(Testimony of Claude Cummins.)

Mr. LILLICK.—Q. Mr. Cummins, was the document which I have just handed you ever submitted to the officers of the Richmond Dredging Company.

A. Yes, sir; Mr. Wernse brought the draft in question to our office, and the terms of it had been practically agreed upon as being satisfactory to both parties.

Q. What was done with reference to the proposed agreement marked "Exhibit No. 3," with reference to the provisions of subdivision 10?

A. Subdivision 10 was put in in order to provide that when the work contemplated under the previous articles and provisions of this charter should have been completed, as it was expected they would be in a short time, that we could have the use of the dredge "Richmond" on to the balance of the year.

Q. Are you speaking of subdivision 10 of the proposed draft instead of the final agreement?

A. Of the proposed draft, by paying \$800 a month for it. When Mr. Wernse brought the draft into the office, in talking over the general situation he said that the Richmond Dredging Company was not in the contracting business, and was not intending to bid on work, or to do work other than work in reference to the land at Richmond to be filled, and the work over there at Richmond, and after his making that statement, taking that position I suggested that we change paragraph 10 to read as paragraph [391] 10 reads in the final draft that was signed, as under that kind of a framing of the paragraph we would have the use of the dredger for work that

(Testimony of Claude Cummins.)

might come up during the balance of the year, and after the work provided and contemplated earlier in the charter was finished, without having to pay \$800 a month, provided that the dredger was not busy. I mean provided we had no work for her. In this draft we would have had to pay \$800 a month to keep her even if we did not obtain any work to put her on. In the final draft we simply had first call on her at \$800 a month.

Q. What did you say to Mr. Wernse about the subdivision 10 of the proposed draft, if you remember?

A. The one that was not signed, you mean?

Q. Yes. A. The one that was not executed?

Q. Yes.

A. In the conversation he made the statement that they were not bidding on work and were not in the contracting business. Then I said to him, "Let us change this paragraph 10 so that we can simply have the call on the dredge any time during the year that we might get a job for her to do after this other work is wound up."

Q. What was done then?

A. We took that sheet out of the draft, having paragraph 10, and had our stenographer re-write that sheet with a new paragraph 10 in it as signed finally.

Q. And by the new paragraph 10 do you mean the paragraph 10 which is in the agreement which is made a part of the amended libel marked Exhibit "A"? A. Yes, sir.

Mr. LILLICK.—We offer this agreement in evi-

(Testimony of Claude Cummins.)

dence, it being the original agreement as finally executed, for the purpose of showing that the first three pages of the agreement are pages which apparently are the first three pages of the proposed [392] draft just testified to by Mr. Cummins, and in order that the testimony with reference to subdivision 10 of the final agreement be before the Court, and ask to have it marked Cummins' Exhibit No. 4.

(The document is marked "Cummins Exhibit No. 4.")

Q. Referring to the executed agreement and clause 10, what if anything was understood between you and Mr. Wernse, or what, if anything, was said by you or Mr. Wernse upon the day when this page was taken out, and the new one written up and inserted with reference to the Standard American Dredging Company having the right to use the dredger "Richmond No. 1," up to the 1st day of January, 1911?

A. I told Mr. Wernse that there were small jobs coming up from time to time that we desired to bid on, and if they were not going to bid on contract work as he had stated in that conversation they were not, we wanted to be in a position to bid on all of it and that we could have the "Richmond" to put on the work, provided they did not need her over there, after we got all this other work as provided for in the charter-party up to paragraph 10, paragraph 10 in both drafts was practically an addition to provide for work that might come up after the work provided

(Testimony of Claude Cummins.)

for by the "Oakland" and the "Richmond" had been completed.

Q. Was there any question at all in your mind at that time, Mr. Cummins, that you, the Standard American Dredging Company, under that agreement had the absolute right to the possession of the dredger "Richmond No. 1," up to the 1st day of January, 1911, if you paid the increased rental for her during the time you kept her?

A. Not the slightest doubt.

Q. Was anything said by you at that time to Mr. Wernse with [393] reference to that in your discussion of the phraseology of paragraph, 10?

A. I cannot say for sure whether there was or not.

Q. What was your understanding of the phraseology "when not in use or required by the Richmond Dredging Company"?

Mr. TAUGHER.—I doubt the propriety of this line of direct examination, and think the evidence incompetent and immaterial, but if Mr. Lillick thinks it will make the surroundings of the making of the contract more clear I will not object to it.

Mr. LILLICK.—That is all I am putting in the testimony for?

A. My understanding of that paragraph and the reason for its being put in was to provide that in case they finished with the "Oakland" and we finished with the "Richmond," the work then on hand that we would have first call on the "Richmond" any time during the year for other work that might come up.

(Testimony of Claude Cummins.)

Q. What was the understanding with reference to the rental for that period in case the dredger was required by the Richmond Dredging Company?

Mr. TAUGHER.—I object to the question on the ground that the agreement itself specifically states what that is, and that the understanding of the parties is embodied in the writing, and what this individual member of the Standard American Dredging Company may think of that provision is of no particular importance now and is consequently irrelevant and immaterial.

A. My understanding was that if we finished and returned the dredger to the Richmond Dredging Company, and then wanted her subsequently under this paragraph 10, we would pay \$800 a month for her. [394]

Mr. LILLICK.—That is all.

Cross-examination.

Mr. TAUGHER.—Q. In the draft charter-party, paragraph 9 reads as follows, does it not? “If the party of the first part”—the Standard American Dredging Company—“shall permit the party of the second part”—the Richmond Dredging Company—“to retain the ‘Oakland’ for long enough to complete 400,000 cubic yards of filling on the lands aforesaid, or if the party of the second part shall fail after notice to that effect to operate said dredger ‘Oakland’ continuously twenty-four hours each day until 400,000 cubic yards of filling shall have been done, (in which case the party of the first part may terminate this lease and retake possession of the ‘Oakland’

(Testimony of Claude Cummins.)

without being required to return the 'Richmond No. 1' or to pay any extra rental therefor) the party of the first part shall have, and is hereby granted, an option to retain the said 'Richmond No. 1' at the rental of eight hundred dollars (\$800) a month for such length of time as it may desire to retain the same, but not beyond the first day of January, 1911."

A. Is that paragraph 9 or 10?

Q. Read it so that you will see what it is.

A. That is paragraph 10. (The witness reads the paragraph.)

Q. Mr. Cutting objected to this and he would not sign it, would he?

A. I do not remember that Mr. Wernse brought it over ready to sign. As I remember now it was agreed to. That was agreeable to Mr. Cutting and agreeable to the Richmond Dredging Co. That is my recollection of it.

Q. Is it not a fact that when you brought this draft to Mr. Cutting's office, that Mr. Cutting said, "Why I would not sign [395] such a charter-party as that; you could under this have the 'Oakland' and the 'Richmond' at the same time?"

A. No, sir.

Q. And that we must have a dredger?

A. That is not the charter-party at all that Mr. Cutting objected so strenuously, not the draft.

Q. Where is the draft that he objected to?

A. I don't know.

Q. Have you ever seen this draft before yesterday?

(Testimony of Claude Cummins.)

A. Sure. I saw it when it was prepared.

Q. How do you know it is the same document?

A. Comparing the pages and the words and the lines down to paragraph 10 shows conclusively that it was made on the same setting of the machine.

Q. But you say now that this was not the draft that Mr. Cutting objected to?

A. That is not the one that he objected to so strenuously as you set forth. I do not remember that Mr. Cutting objected to that one at all.

Q. Do you mean another copy of this same charter-party? A. We made several copies.

Q. Do you mean that it was not this particular copy of the draft charter that he objected to because he never saw this before?

A. All the copies were made at the same setting of the machine.

Q. Now, on Mr. Cutting's objection, was not paragraph 10 changed so as to read as follows: "It is hereby mutually agreed and understood that the rent of said dredger 'Richmond No. 1' shall be eight hundred (800) dollars per month, and that the said first party shall have the right to lease and use said dredger 'Richmond No. 1' at any and all periods when not in use or required by the party of the second part until January 1st, 1911." [396]

A. That was changed at my instigation and not Mr. Cutting.

Q. Changed at your instigation?

A. Yes, sir, after the conversation with Mr. Wernse in which he said they were not bidding on

(Testimony of Claude Cummins.)

contract work and were not in the dredging business.

My reason—

Q. I am not asking for your reason.

Mr. LILLICK.—Q. You have a right to explain your answer, and go on with your explanation, if you desire.

Mr. TAUGHER.—Q. I am only asking you for what happened.

A. I suggested to Mr. Wernse the advisability, if that was the case, resulting from his statement, that we change paragraph 10 to read as outlined in that new draft as we would thereby on friendly relations have first call on the dredge and not have to pay \$800 a month for her, if we had nothing for her to do.

Q. You did not have to pay \$800 a month under the draft charter-party unless you were using it. The draft simply says, "The party of the first part shall have, and is hereby granted, an option to retain the said 'Richmond No. 1,' at the rental of \$800 a month for such length of time as it may desire to retain the same, but not beyond the 1st day of January, 1911." A. Certainly.

Q. That did not make you liable for any amount unless you wanted to use it?

A. If we retained it it did.

Q. If you retained it? A. Yes, sir.

Q. You had to pay \$800, in the second draft, if you retained it also? A. Don't you see the difference?

Q. No, just point out the difference.

Mr. LILLICK.—Be very careful, Mr. Cummins, about your statement when interrupted by counsel

(Testimony of Claude Cummins.)

in the train of your [397] thoughts. You say, "Don't you see the difference?" If you have anything to go on with that, go on and answer the rest of the question full.

Mr. TAUGHER.—If the witness needs prompting or suggesting to, I would rather that you would do it by open suggestions than by suggestions under the cover of an objection.

Mr. LILLICK.—I am not attempting to prompt the witness but only endeavoring to prevent the witness being disconcerted by counsel on the other side. Mr. Cummins was in the middle of an answer and commencing to reply something which was interrupted by Mr. Taugher. I desire Mr. Cummins, if he has anything further to say, to continue with his answer.

Mr. TAUGHER.—I desire that Mr. Cummins take all the time he can to explain this point if he can explain it. I want light on it.

A. Read the last question to me.

Mr. LILLICK.—Let me advise you to go slowly because it is necessary to have this in exactly as it should be, so that we may get at the truth. That is all we want.

Mr. TAUGHER.—And it is dangerous also.

(The Reporter reads the question.)

Q. Point out the difference. Take the draft, and the one that was finally signed and point out the difference between paragraph 10 as contained in the draft, and paragraph 10 in the charter-party as signed.

(Testimony of Claude Cummins.)

A. In the case of each charter we will suppose—I will have to go at this at a little length to get at my understanding of it—we will suppose that the work as provided for by the previous paragraph of the charter has been completed. In the [398] case of the first charter—

Q. You mean the draft?

A. The first draft, in the case of the first draft if we desired—

Q. Is this the first draft (pointing)?

A. Of these two it is the first.

Q. One is the draft and the other is the charter-party?

A. In the case of the first draft present if we retained the dredge with the idea of using it for work that might come up, we would pay \$800 a month, whether it was used or not, providing now that all the work that has gone before was completed and the dredger was returned. In the case of the one signed we would not have to pay the \$800 a month, provided we did not have any work for the dredger to do but would have first call on it, taking it for granted that Mr. Wernse's statement that they were not going to bid on work is correct and would thereby save \$800 a month on it when it was not employed.

Q. Do you want us to understand that under the draft charter-party you would be compelled to pay \$800 a month for the time that you retained the dredge "Richmond No. 1," after the completion of the work contemplated at the time this was made, whereas under the charter-party as signed you

(Testimony of Claude Cummins.)

would have to pay \$800 a month for the time that you retained the dredge "Richmond No. 1," after the work was completed? Is that what you want us to understand?

A. In the case of the draft, after the completion of all the work covered by the previous paragraphs, in case we retained the dredge we would do so at an expense of \$800 a month, and in the case of the final draft, if we had finished all the work provided [399] for up to the tenth paragraph, the work provided for under the charter that was then on hand, and returned the dredger, we would have first call on her without paying \$800 a month except when in use.

Q. Well, isn't that the same provision as to that part under the original? A. No, sir.

Q. As under the charter-party signed?

A. No, sir.

Q. Well, now, do you say that under the draft you would have to pay \$800 a month for the time you retained the "Richmond No. 1" after the work was completed?

A. After the work contemplated in paragraph ten.

Q. That is, if you retained the "Richmond" after that time you would have to pay \$800 a month?

A. After the work was all completed?

Q. Yes. You would have to pay \$800 per month—under the agreement with them if you were holding it and doing nothing with the dredge. A. Yes.

Q. You would have to pay \$800 a month under the draft?

A. After all this other work was completed, yes.

(Testimony of Claude Cummins.)

Q. But after the other work was completed, if you continued to hold possession of the "Richmond" without using it all you would pay \$800 a month?

A. Yes.

Q. Never mind looking at counsel; just answer my question.

Mr. LILLICK.—I protest against the remark of the counsel on the other side. I was not paying any attention to the witness except to listen to the questions and answers.

Mr. TAUGHER.—I was not talking to you, and I do not want my remark to go into record unless you want it to. (Addressing the witness.) I want you to answer my question without looking at [400] counsel to see how he wishes you to answer it. If you want that to go in, it is all right.

Mr. LILLICK.—I submit that is an uncalled for comment of counsel on the other side; the witness has not looked to counsel to find out how counsel want him to answer, because there is an impossibility of any communication between counsel and witness, and we do not propose to communicate with him while he is on the stand.

Mr. TAUGHER.—If you were not looking at him, how would you know anything about it? Put everything in the record, if you are going to put in anything, Mr. Reporter.

Mr. LILLICK.—I desire to state that counsel's ruddy face and intimidating manner caused me to take notice of the fact that he had attempted to impute improper conduct to the witness. I think this

(Testimony of Claude Cummins.)

is a very unseemly sort of procedure to be going on, and I object to it; that is all.

Mr. TAUGHER.—I object to Mr. Lillick intending to give a cast to the proceeding that was never intended. When I asked the question the witness had been looking at me and turned around before answering to look at his counsel, and I merely told him to look at me and answer and not to look any place else. Mr. Lillick then takes the opportunity to get something else in that does not belong here and that never was intended.

Mr. LILLICK.—Is there a question remaining to be answered?

The WITNESS.—I think I answered it.

(The last question and answer repeated by the Reporter.)

Mr. TAUGHER.—Q. That is what you thought you had to do under the draft, is it—under clause ten of the draft?

A. Yes.

Q. Do you consider that under clause ten in the charter-party as [401] signed that if you retained possession of the “Richmond” you would not have to pay \$800 a month, whether you were using her or not?

A. The other clause does not contemplate us holding the dredger for work at all, after we had finished with her.

Q. Just repeat that, please.

A. Paragraph ten of the charter does not contemplate us holding the dredge for work after the work was completed.

(Testimony of Claude Cummins.)

Q. After what work?

A. After the work we were doing, had in mind to do.

Q. I see. That did not contemplate your holding it beyond completion of the work that was under contemplation at the time you made the agreement, the charter-party. Is that what I understood you to say?

A. When we got through; after we got through with her.

Q. Through what?

A. Through doing the work with her.

Q. What work?

A. Well, the work at Eureka. I did not know how long we would be up there.

Q. You knew how long you would be there?

A. No, we did not. We did not know.

Q. Well, when you finished at Eureka, was it your understanding at the time of making that charter-party, when you finished at Eureka you had to return the "Richmond No. 1," to the Richmond Dredging Company? A. Not necessarily.

Q. You could hold her?

A. Hold her as long as we paid \$50 a day for her.

Q. Hold her as long as you paid \$50 a day for her?

A. Yes.

Q. Whether the Richmond Dredging wanted her or not? A. Sure.

Q. Was it your understanding that you would have to pay \$50 a day for any definite time? [402] Just as long as you wanted to hold it you would have

(Testimony of Claude Cummins.)

to pay \$50 a day? A. Yes.

Q. Was it your understanding that you would have to pay \$50 every day you held it, whether you used the dredger or not?

A. It was not our expectation to do any such thing.

Q. Read the question again to him.

(The last question repeated by the Reporter.)

A. If the Richmond Dredging Company wanted it we would have to pay \$50 a day for it, if we held it.

Q. Whether you used it or not? A. Yes.

Q. Do you think that that charter-party gave you the right to hold the dredger "Richmond No. 1," after you had finished the work in contemplation at the time of the making of the charter-party on February 26, 1910?

A. Yes; it gives us the right to hold it if we paid the \$50 a day for it.

Q. And you could hold it and not use it if you wanted to pay \$50 a day? A. Yes.

Q. And you could keep it just as long as you wanted to at \$50 a day? A. I think so.

Q. But the Richmond Dredging Company could not make you pay \$50 per day for a single day longer than you wanted to pay the \$50 a day?

A. They could not make us pay \$50 after we had returned the dredger.

Q. They could not make you hold it a single day longer than you wanted to hold it at \$50 a day?

A. No. I don't think they could.

Q. Now, in the draft charter-party, you say, in paragraph ten, you have these words, "If the party

(Testimony of Claude Cummins.)

of the first part (that is, the Standard American Dredging Company) shall permit the party of the second part (that is, the Richmond Dredging Company) to retain the [403] 'Oakland' for long enough to complete 400,000 cubic yards of filling on the lands"—if they retained it long enough to do that 400,000 cubic yards of filling "the party of the first part shall have, and is hereby granted, an option to retain the said 'Richmond No. 1,' at the rental of eight hundred per month for such length of time as it may desire, but not beyond the first day of January." You see that in the draft, don't you?

A. You are reading it.

Q. I am reading it. Verify the words.

A. Yes.

Q. Now, was it not the Richmond Dredging Company who objected to that provision and would not sign it and told you that if you came up there and tried to hand them such a lemon as that you could bring back the "Richmond" and they wanted nothing more to do with you?

A. That conversation regarding the lemon did not occur in regard to either one of these.

Q. What is that?

A. The conversation regarding the lemon did not occur regarding either one of these drafts, but it was an entirely different draft from these.

Q. That was an entirely different draft where he said you were attempting to hand him a lemon?

A. Yes.

Q. Where is that draft?

(Testimony of Claude Cummins.)

A. We have a copy, I think, of it in our office, I guess.

Q. I would like to see it.

A. I guess Mr. Cutting has a copy in his office.

Q. No, he has not.

A. I don't know whether he has or not.

Q. Didn't he say, "If that is the kind of deal you want to hand me, bring me back my 'Richmond' and I don't want your 'Oakland' "?

A. The draft you refer to had a lot in there about land and one thing and another; that was what he objected to, as I remember now. [404]

Q. Did not Mr. Cutting say in effect that if that is the kind of treatment you want to give me, bring back the "Richmond No. 1," and he would not have anything to do with the "Oakland" ?

Mr. LILLICK.—Are you referring to the draft we have here?

Mr. TAUGHER.—Yes.

Mr. LILLICK.—In that question?

Mr. TAUGHER.—Or any other draft of this agreement, of this charter-party?

A. Which question are you asking—the last one or the first one?

Q. Will you read it, Mr. Reporter?

(The last question repeated by the Reporter.)

A. He said that regarding the first draft; the first draft, as I remember it; the first one that we drafted, but not either one of these.

Q. It was because he objected to your attempt to take advantage of him, as he considered it, in the

(Testimony of Claude Cummins.)

charter-party, that he said he would not have anything to do with that charter-party, and he wanted you to return the "Richmond"?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and calling for the conclusion of the witness and not proper cross-examination, referring to another charter-party or purported charter-party other than the ones which Mr. Cummins was examined on on direct examination.

Mr. TAUGHER.—Q. Read the question so that the witness may answer.

(The last question repeated by the Reporter.)

A. My impressions were—

Q. Never mind what they were; tell us what they are.

Mr. LILLICK.—Q. Continue your answer.

Mr. TAUGHER.—Q. Your memory now and not your impression. [405]

A. Mr. Cutting's strenuous objections were against the part of the draft handed him that pertained to taking land as payment for the filling, **provided we** did certain filling over there.

Q. That was the ground of his objection, was it?

A. That is my impression.

Mr. LILLICK.—Q. Are you referring to objections to this proposed draft, Mr. Cummins?

A. To neither one of these drafts.

Mr. TAUGHER.—Q. How many drafts of this charter-party were made? A. Several.

Q. Several? A. Yes.

Q. Who drew them?

(Testimony of Claude Cummins.)

A. We drew them in each case, I believe, and submitted them to Mr. Cutting, and he made what changes he thought necessary and sent them back for our consideration.

Q. Who do you mean by "we" made them, when you say we made them?

A. Mr. Connor and I were the ones in our office that had to do with the making of them.

Q. Anybody else have to do with the making of them? A. Not in our office.

Q. Did anyone else have to do with the making of these or advise concerning the form or the substance of the charter-parties or the draft charter-parties?

A. Mr. Spilman prepared the forms.

Q. Mr. Spilman? A. Yes.

Q. Who is Mr. Spilman?

A. The gentleman here.

Q. Your attorney? Anybody else?

A. I don't remember that anyone else was consulted in the drawing of them.

Q. Did Mr. Spilman say that he would submit them to any other attorney who was interested in the matter?

Mr. LILLICK.—Objected to as irrelevant and immaterial and calling for hearsay testimony.
[406]

A. I don't recall that he did.

Mr. TAUGHER.—Q. Do you know whether or not he did?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

(Testimony of Claude Cummins.)

A. I do not.

Mr. TAUGHER.—Q. You do not recall that he told you he had submitted them to some other attorney?

Mr. LILLICK.—Objected to as immaterial and irrelevant and not proper cross-examination.

Mr. TAUGHER.—Q. Or that he had consulted any other attorney concerning them? A. No.

Q. Or any of them.

Mr. LILLICK.—Same objection. A. No.

Mr. TAUGHER.—Q. Mr. Cutting insisted upon that clause being stricken out, did he not?

A. In regard to the land, yes.

Q. No, but in regard to—Mr. Cutting insisted upon the clause ten being changed by striking out that part of the draft, clause ten, to the effect that if the Standard American Dredging Company permitted him to retain the “Oakland” long enough to complete 400,000 cubic yards, whether he had done so or not? A. No.

Q. It was stricken out was it not? A. Yes.

Q. And you mean to tell me that it was stricken out upon the suggestion of the Standard American Dredging Company? A. Yes.

Q. And not upon the suggestion or objection of the Richmond Dredging Company?

A. It was struck out as a result of a statement of Mr. Wernse that they were not in the dredging business, and were not bidding on contract work.

Q. But the fact remains that that clause went out of the charter-party as finished, did it not?

(Testimony of Claude Cummins.)

A. A new paragraph ten was substituted for it.
[407]

Q. And you want it to go on record as saying that in the change in paragraph ten was made at the suggestion of the Standard American Dredging Company and not at the suggestion of the Richmond Dredging Company or any of its officers?

A. Yes, that is my recollection of it.

Q. That is your recollection of it? A. Yes.

Q. Paragraph ten of the draft further states: "In which case the party of the first part (Standard American Dredging Company) may terminate this lease and retake possession of the 'Oakland' without being required to return the 'Richmond No. 1,' or to pay any extra rental thereof."

Mr. LILLICK.—Are you reading from the executed copy?

Mr. TAUGHER.—No, the draft.

Q. That clause was stricken out of the charter as executed, was it not, Mr. Cummins?

A. The charters will show whether it was.

Q. Was that stricken out on the insistence of the objection of the Richmond Dredging Company or of the Standard American Dredging Company?

A. As I remember, clause ten was changed at our own suggestion, for the reasons stated before.

Q. And that was not done at the suggestion of the Richmond Dredging Company, or any of its officers?

A. No, I think not.

Q. You think not? A. Yes.

Q. Were you present in all of these discussions

(Testimony of Claude Cummins.)

that were had?

A. So far as I remember, I was present at all of them, unless at some time Mr. Connor might have gone over with a draft of the charter and might have had some discussion when I was not there.

Q. Did you ever discuss the draft with Mr. Cutting? A. I discussed the original one with him.

Q. The original draft?

A. The first draft, in which he called it [408] a lemon.

Q. Did you discuss the second draft with him?

A. I am not right sure how much discussion I had with Mr. Cutting; some over the telephone I think. I am not right sure whether we had personal conference on it or not.

Q. Well, would you say, Mr. Cummins, that paragraph ten of the charter was not much more favorable to the Richmond Dredging Company than paragraph ten of the draft charter?

A. I do not get your meaning there. I do not understand your phraseology. Do you mean to ask whether paragraph 10 of the draft was more favorable or not?

Q. Read the question, Mr. Reporter. (The last question repeated by the Reporter.) Take the two of them and look them over.

A. I can answer it without that. I do not know which paragraph they considered most favorable to them; I know which one we considered as suiting us best.

Q. Would you not say that paragraph ten of the

(Testimony of Claude Cummins.)

charter was much more favorable to the Richmond Dredging Company than paragraph ten of the draft?

A. I do not know how that might strike them.

Q. You are not able to say from your knowledge of the whole transaction, from the reading of these charter-parties, whether or not paragraph ten of the charter is not much more favorable to the Richmond Dredging Company than paragraph ten of the draft charter would have been.

A. As I recall at this time, both paragraphs were suitable or agreeable to them.

Q. And you would say that it was not because of the instance or objection of the Richmond Dredging Company that paragraph ten of the draft charter was changed to read as paragraph ten reads in the charter-party? [409]

A. As I told you before, I think that paragraph was changed at our solicitation, after Mr. Wernse's statement that they were not in the dredging business and were not bidding on work.

Q. Did you know that they had a contract with the Santa Fe at Richmond and that they had a contract with the City of Richmond to do filling work which could be done only by a dredger?

A. I did not know they had a contract with the Santa Fe.

Q. Didn't you know they were bidding on a contract, bidding to do some dredging work for the Santa Fe at Richmond?

A. I know there had been some negotiations in the past covering a good many months.

(Testimony of Claude Cummins.)

Q. Had not the Standard American Dredging Company made an estimate of the cost of that work?

A. Something like a year before; yes.

Q. And made an offer to the Santa Fe as to what they would charge for doing the work?

A. Some time before I came to California they had, yes; before I came back.

Q. Didn't you know that the Richmond Dredging Company had signed a contract with the Santa Fe almost a month before this charter-party was made?

A. No, I did not.

Q. Did Mr. Cutting and Mr. Wernse both tell you that? A. No they did not.

Q. Did not Mr. Perry tell you that?

A. No, not a word.

Q. Did you not know that the Richmond Dredging Company had a contract with the city of Richmond?

A. I knew from Mr. Wernse, as I remember, that they were to fill certain streets, do some filling in the streets in connection with the land fill, but I never saw any of the papers, never saw any contract.

Q. Streets where? On the land of the Point Richmond Canal and Land Company? [410]

A. Lands of the tract I understood they originally owned.

Q. Were you familiar with the property at Pt. Richmond that was filled and to be filled?

A. Not very. I have been over there with Mr. Wernse to look over the question as to whether enough soft material could be obtained to fill portions of their land or not.

(Testimony of Claude Cummins.)

Q. How far did Mr. Wernse tell you he would want to deposit this soft material from, the point of dredging?

A. Something like 3,000 feet; 3,000 or 4,000; 3,000 to 3,500, as I remember.

Q. Did he tell you where he was going to put this soft material?

A. He showed me the area of the lands of the land company, the Richmond Land Company, that he desired to fill.

Q. Did he ask you anything about levees for the Santa Fe? A. No, sir.

Q. What it would be worth to build levees for the Santa Fe?

A. No, not up to the time the charter was signed.

Q. Didn't you discuss with him the value of building levees?

A. No; that was in regard to building levees for the streets.

Q. That was in regard to building levees for streets? A. Yes.

Q. It was not for building levees on the Santa Fe lands? A. No.

Q. You are positive as to that? A. Yes.

Q. Speak your answer and not nod it.

A. Well, I say that any levee work that I discussed with him was regarding the streets of the land company's property, as to the advisability of building levees along the streets.

Q. Did he point out to you where he was going to put those levees?

(Testimony of Claude Cummins.)

A. He showed me on his map the general area, the general land area that they wanted to fill intersected by parts of the streets all through. [411]

As I remember it now, it came up pretty close to the canal on the one side, and joined on to the Santa Fe's property on the other side. I think it ran between the canal and the Santa Fe's property.

Q. Well, the canal was a mile and a half away from the Santa Fe's property, was it not?

A. No, I don't think so.

Q. What was your advice to him as to building levees on the streets?

A. I told him I thought the best thing to do was to run the pipe-line along the streets and then let the material spill both ways on the property.

Q. Did you discuss with him at length the cost of building levees?

A. I don't remember whether I made an estimate on the cost of the levees or not; as to whether we went into that minutely or not.

Q. Did you discuss with him the strength of the levees necessary to hold, to impound a body of water covering about seven or eight acres?

A. Well, I probably did.

Q. Don't you recollect discussing with him the strength of levees that would be required to impound water on an area of that size?

A. I very likely did, although I don't remember what size I told him, or anything of that sort. We had a general discussion of the levee proposition and filling over there on their lands when they wanted us

(Testimony of Claude Cummins.)

to do a lot of filling for them, for running the dredger and pay so much for operating her—that was the cause of my going over there, and that is when we went into the thing the most fully, we went into the thing at all, and that was some time prior to this charter, some months prior.

Q. Do you remember going over the ground with Wernse and having him point out to you where they were going to build the levees; and asking your advice as to how they should be built on that particular area? [412]

A. What area do you mean, the Santa Fe area?

Q. Yes. A. No.

Q. When did you first see the dredger in operation at Richmond, the dredger “Oakland”?

A. The dredger “Oakland,” oh, some time not very long after she started work over there; it could not have been very long. I went over there several times while she was working there.

Q. How long was it? A week after?

A. I could not say; it might have been a week; it might have been two or three weeks; it might have been thirty days; but I think it was during the early portion of their work there.

Q. They were depositing at that time on the area north of Ohio Street, were they not?

A. I do not know the streets of the place.

Q. Right close to the depot of the Santa Fe?

A. I think the first time that I went over there I saw them working, they were depositing up near the Santa Fe tracks, pretty well toward the Richmond

(Testimony of Claude Cummins.)

end of that long strip.

Q. Did you know that was on the land of the Santa Fe? A. I did then when I went over there, yes.

Q. And you want us to understand that you did not know before that time that they were going to do this work for the Santa Fe?

A. I did not know before the charter-party was agreed upon.

Q. They had not discussed with you for whom they were going to do this work?

A. No, except to say, as I said before in my previous testimony, that they had land, that they had sold land there, and that it would make their situation very acute if they did not have something there by the first of March to do some filling.

Q. Didn't they tell you that they had contracts to commence dredging on the 26th of February, 1910?

A. For whom? [413]

Q. That they had contracts to commence dredging operations at Richmond on the 26th day of February, 1910? A. Dredging for whom?

Q. I am not asking that now. I say, commence dredging operations?

A. I don't know. It was along about that time that they were in an awful hurry to get the dredger over there; whether or not they were to start that date or not I don't know. My recollection is now about the first of March was the strenuous time with them.

Q. Didn't you put the dredger in the canal for them at Richmond on the 20th of February, 1910?

(Testimony of Claude Cummins.)

A. I don't know. I know that they importuned us very strongly to get the machine over there so as to make a showing as soon as possible, so she would be in the canal. I can't state whether the dredge went before the charter-party was signed or afterwards; but I remember the impression at the time it would help them out if the dredger was on the ground; they came right out and said plainly it would help them a great deal if the dredger was in the canal, and I expect she went there before the charter-party was signed, although I could not swear to it.

Q. How many feet of shore pipe did you undertake to deliver with the dredger to them at Richmond?

A. I have forgotten now. We figured it up, Mr. Wernse and I figured it up. I figured that they might be able to reach the end of the fill with the pipe we had; if they got right on the long line, as I remember it now, the pipe would just about make it.

Q. Do you know whether or not the Standard American Dredging Company ever agreed with the Richmond Dredging Company that they would buy as much pipe more as was needed and charge it to the Standard American Dredging Company?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and [414] not proper cross-examination.

A. I do remember after the work started Mr. Wernse came to our office with a map and showed us that he was about 1,000 feet of pipe short of enough to reach to the end of the Santa Fe fill, the long end of the fill, the strip that ran away up, and that he felt like as though they would only need that pipe for

(Testimony of Claude Cummins.)

a short time on that long end, that we ought to stand for that pipe, although we only agreed to furnish them such pipe as we had; after considerable discussion we finally agreed to apply the value of the 1,000 feet of pipe on the charter of the dredge.

Q. Only a thousand feet?

A. Only a thousand feet.

Q. Do you remember if that authority was given in writing to purchase the pipe by the Standard American Dredging Company?

A. Well, the agreement was arrived at by measuring the blue-print or the map Mr. Wernse brought, and he agreed that if we furnished a thousand feet of pipe, it would be enough. When the letter confirming this agreement was drafted, that was drafted in Mr. Cutting's office, that limiting clause was left out, and in it was put instead sufficient pipe, as I remember now the sense of it, sufficient pipe to do the job. Now, of course, we had already agreed that one thousand feet was enough to do that job, and that quantity was the quantity agreed upon to pay for.

Q. When that agreement to buy and turn over to the Standard American Dredging Company was signed by the Richmond Dredging Company and by the Standard American Dredging Co. no limit was put upon the Richmond Dredging Company as to the number of feet that they should buy?

Mr. LILLICK.—We object to that upon the ground that the writing [415] is the best evidence, and the further ground that it is not cross-examination and irrelevant and immaterial.

(Testimony of Claude Cummins.)

A. The letter was a confirmation of the agreement that was had with Mr. Wernse.

Mr. TAUGHER.—Q. Do you know who signed that on the behalf of the Standard American Dredging Company?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and not proper cross-examination.

A. I rather think I signed it myself.

Mr. TAUGHER.—Q. How long after commencing operations was it that you went over and saw the dredger at work at Richmond?

A. I could not say; it might have been a week and it might have been two weeks.

Q. When you came they were pumping on the area close to the Santa Fe depot, were they not?

A. As I remember, they were pumping over in toward the Richmond end of the fill; that is the in-shore end of the Santa Fe strip; not clear to end, because they did not have pipe enough to reach it.

Q. Did you make any objection to their using the dredger for the Santa Fe work?

A. What is the use?

Q. What was the use? A. Yes.

Q. Well, did you?

A. They had a right to under the charter.

Q. Did you ever say anything or make any objection to their doing the work for the Santa Fe or the City of Richmond?

Mr. LILLICK.—Objected to as irrelevant and immaterial.

A. I objected to the length that they were trying

(Testimony of Claude Cummins.)

to shove the material; they were taking and trying to reach the end of the Santa Fe fill whereas in our discussion on the length of the line and the character of material they were to push, it never [416] appeared that they were going to fill on the Santa Fe strip, and that strip required a longer pipe-line.

Q. Did you say on your direct examination that the Puget Sound Bridge Company was practically the same concern, practically had the same officers as the San Francisco Bridge Company?

A. No; the officers were not the same. It was a separate corporation, but there were a great deal of the same interests in the two.

Q. They still exist, do they? A. Yes.

Q. Is the Standard American Dredging Company interested with the San Francisco Bridge Company and the Puget Sound Bridge Company in any contracts or any work? A. Not in the least.

Q. Are there any stockholders of the Standard American Dredging Company who are also stockholders of the San Francisco Bridge Company?

A. No, sir.

Q. Now, Mr. Cutting or Mr. Wernse told you that the contracts they had on hand and which they wanted to complete with the "Oakland" required about 400,000 cubic yards of filling, did they not?

A. The 400,000 cubic yards of material was fixed as the maximum that they might want to do. I don't recall that they told us that they had absolute contracts that required 400,000 cubic yards. My impression was that certain of these lots they had

(Testimony of Claude Cummins.)

not sold but the material would spill over on lots that they had not sold.

Q. Now, let me see if this explanation of that does not recall it to your mind, Mr. Cummins, that the Santa Fe job would require about 230,000 or 240,000 cubic yards of material, and the city of Richmond job would require about 100,000, between 90,000 and 100,000 cubic yards, but because they did not intend to build levees on the streets under their contract with the city of Richmond, he would allow some to spill away; that it would take [417] 400,000 cubic yards to fulfill those contracts?

A. Nothing whatever was said to us about Santa Fe work prior to the charter agreement.

Q. Well, you knew that the Richmond Dredging Company had no land in Richmond, didn't you?

A. No, I did not. The canal company had lands over there, and were handling lots over there. It was on these lots that I presume that they expected to use the dredger.

Q. Now, prior to the expiration of the charter-party of October 18, 1909, of the dredger "Richmond No. 1" did not the Richmond Dredging Company notify you that they would require the dredger "Richmond No. 1" to be returned to the Richmond Dredging Company on the expiration of that charter-party?

A. They might have notified Mr. Perry and they might have notified the company by letter. I was not in the city at the time.

Q. Do you not know it to be the fact that the

(Testimony of Claude Cummins.)

Standard American Dredging Company urged the Richmond Dredging Company not to insist upon the return of the "Richmond" until after you had completed your contract at Eureka?

A. I know the Standard American Dredging Company desired to use the dredger up there until the job was done.

Q. And that as an inducement to the Richmond Dredging Company to accept that proposition you agreed that the Richmond Dredging Company have your \$150,000 dredger "Oakland" for the same price as you were paying for the \$30,000 or \$40,000 dredge "Richmond No. 1"?

A. No. They would use the "Oakland" 12 hours a day and the "Richmond" 24 hours a day.

Q. But that is all the time the Richmond Dredging Company contemplated working the "Oakland" any way, was one shift, was it not? [418]

A. They did work her two shifts.

Q. Only upon your demand so to do. A. Yes.

Q. But did not they explain to you that if they had the "Oakland" they would only want to work it one shift anyway because they would get more than half the results from the day shift than you did from a 24 hour shift—didn't you?

A. That was not the reason they stated.

Q. And the Standard American Dredging Company was very anxious to have the Richmond Dredging Company accept that offer of taking the "Oakland" at Richmond instead of forcing you to bring

(Testimony of Claude Cummins.)

back the "Richmond" before you completed the Eureka job?

A. I consider that the arrangement of the charter was mutually advantageous to both parties.

Q. Did not Mr. Cutting discuss with you the advisability of enlarging the "Richmond" by lengthening her hull and increasing her to a 15-inch pump instead of a 12-inch pump?

Mr. LILLICK.—Objected to as irrelevant and immaterial.

A. I said that.

Mr. TAUGHER.—Q. No, Mr. Cutting.

A. He possibly did.

Q. Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. I don't recall it, though.

Q. Was it not in connection with that discussion as to the advisability of enlarging the "Richmond" and putting on motors on her at Richmond that you had your only discussion with Mr. Cutting concerning motors for the "Richmond No. 1"?

A. No, I think not.

Q. You think not.

A. No. That would be quite an extensive job in that machine; quite an extensive one, on account of hull [419] and discharge pipes and ladder, etc.

Q. Don't you know, as a matter of fact, Mr. Cummins, that the Point Richmond Canal and Land Company had no land more than 2,000 feet from the point of dredging at Richmond?

A. No, I don't know that; especially not from the

(Testimony of Claude Cummins.)

point of supply of soft material.

Q. At the time of the making of that charter-party do you not remember Mr. Cutting discussing at length the reason that he had to have the dredger, either the "Oakland" or the "Richmond" until he had completed 400,000 cubic yards of filling?

A. No. He had to have a dredger on March 1.

Q. And that he had bonds up to do that work and he could not be left without a dredger?

A. No, sir, I don't remember that.

Q. And that it was for that reason that paragraph ten of the draft was changed to read as it now does in the charter-party?

A. No. It was not changed at his instigation, as I remember.

Q. Out of pure benevolence on your part you decided not to drive as hard a bargain with him as you did under the draft, was that it?

A. I believe I answered before that I thought that the paragraph ten in the charter was more advantageous to us than the other one.

Q. Why didn't you have some such provision as that in any of the drafts—you made all the drafts?

A. What do you mean, some such provision as that?

Q. As in paragraph ten of the charter-party?

A. I do not understand your question.

Q. The Reporter will read it to you.

(The last question repeated by the Reporter.)

A. I still do not understand what you mean by that.

(Testimony of Claude Cummins.)

Q. That is, you did not decide to assume a benevolent attitude toward the Richmond Dredging Company until just the last moment of [420] signing the contract?

A. If that is a question for me to answer, I don't know what it is. Please frame it so that I can get at what you want. There is no question yet that I can answer.

Q. You said this morning that a dredger rents for 30 per cent per year of its valuation.

A. You say that I said that?

Q. Yes.

A. Is that a question, asking if I did say that?

Q. Yes.

A. Yes. As I remember, the position I took was that the average of the charters that I had known of, that I had been familiar with, with one exception, ran about that.

Q. Thirty per cent of the value?

A. Yes; about that. That is round figures, you understand.

Q. On the first charter-party of the "Richmond No. 1," you were paying at the rate of \$15,000 a year, were you not? A. Yes, we were paying too much.

Q. Paying too much? A. Yes.

Q. That is what they were paying, was it not?

A. That is what the Standard American Dredging Company was paying, yes.

Q. Aren't the officers and directors of the Standard American Dredging Company the officers and directors of the California Reclamation Company?

(Testimony of Claude Cummins.)

A. About the same. I don't know whether they are exactly the same or not.

Q. Well, who is the president of the Standard American Dredging Company? A. Mr. Perry.

Q. Who is the president of the California Reclamation Company? A. Mr. Perry.

Q. Who is the vice-president of the Standard American Dredging Company? A. I am.

Q. Who is the vice-president of the California Reclamation Company? A. I am. [421]

Q. Who is secretary and treasurer of the Standard American Dredging Company?

A. I have forgotten now. I believe Connor is secretary. I am not sure whether he is; I think so.

Q. He is treasurer?

A. I guess it carries the office in the same man, I am not sure. I think it is likely that the secretary and treasurer are the same.

Q. Who is the secretary and treasurer of the California Reclamation Dredging Company?

A. I am not sure whether it is Mr. Connor or not.

Q. The rent, then, of a dredger of \$150,000 would be about \$50,000 a year, would it, Mr. Cummins?

A. Figured on a basis of 30 per cent, it would be \$45,000.

Q. You would not say that the "Oakland" was worth \$45,000 a year, would you?

A. On the same basis as the C. R. Company paid for the "Richmond" she probably would.

Q. Just ask him the question again.

(The last question repeated by the Reporter.)

(Testimony of Claude Cummins.)

A. On the same basis that the C. R. Company chartered the "Richmond" she would be.

Q. Well, is she worth that much?

A. The worth of a dredging plant is largely a matter of what work you have on hand.

Q. How long has she been working at San Pedro, the "Oakland"? A. About nine months.

Q. What is the value per day of her output there?

Mr. LILLICK.—We object to that as wholly irrelevant and immaterial and not proper cross-examination.

A. It varies with the prices we are getting.

Mr. TAUGHER.—Q. Taking into consideration the varied prices what is her output there per day?

A. In dollars and cents or in yards? [422]

Q. In dollars and cents per month?

A. It varies from ten to twenty-five thousand dollars a month.

Q. From \$10,000 to \$25,000 a month? A. Yes.

Q. What does it cost to operate her per month approximately?

A. That runs from \$10,000 to \$20,000 a month.

Q. It runs from \$10,000 to \$20,000 a month?

A. Yes.

Q. What makes that great variation?

A. Owing to the class of work she is doing, how many levee men there are; and so on.

Q. That doesn't make the difference between \$10,000 and \$20,000 in one month's expenses, does it?

A. Not that item alone. There are other items

(Testimony of Claude Cummins.)

that enter into it. There are others.

Q. Is it or is it not the fact that this dredger has been earning \$10,000 a month clear, net, on the job at San Pedro?

Mr. LILLICK.—Objected to as irrelevant and immaterial for any purpose whatever in this case.

Mr. TAUGHER.—It is not immaterial at all; it is absolutely material.

A. She has not.

Q. What has she averaged net per month down on that job?

A. I would like to know from our attorneys whether that is a proper question or not, which I have to answer.

Mr. LILLICK.—It is not a proper question.

Mr. TAUGHER.—I want to know for the purpose of showing the value and the earning capacity of the "Oakland" for the purpose of comparing it with the capacity of the "Richmond No. 1."

Mr. LILLICK.—If you do not desire to answer it, do not answer.

Mr. TAUGHER.—I want an answer to the question.

A. Well, I do not mind. For the first seven months on the work, for the first seven or eight months we worked, she ran behind [423] \$27,000.

Q. Yes. A. Does that answer your question?

Q. And for the balance of the time?

A. Made a little money.

Q. How much is a little?

A. Quite a little. I do not carry it all in my head,

(Testimony of Claude Cummins.)

but I do remember she lost a lot of it; I had that thrust on me every month.

Q. Judging by your testimony and portions of Mr. Perry's testimony the Standard American Dredging Company does nothing but lose money.

A. It does, its share of it.

Q. Did you take the job at that price in San Pedro for the purpose of preventing any other dredging company from taking it?

Mr. SPILMAN.—I object to this question as immaterial and irrelevant and not proper cross-examination.

A. I could not say. I was not in the city or the state.

Mr. TAUGHER.—Q. During the first several months of the work at San Pedro was she doing the hardest part of the contract?

A. No, the average.

Q. Then what would you say would be a fair rental value of the "Oakland" per day?

A. Per day—they are seldom rented that way.

Q. Well, make it per month, then.

A. Around \$3,000 a month.

Q. Around three thousand a month? A. Yes.

Q. That would be about a \$100 a day? A. Yes.

Q. Couldn't anybody rent her for that price?

A. She has been rented for less than that.

Q. To whom did you rent it for less than that?

A. Richmond Dredging Company.

Q. The Richmond Dredging Company?

A. Yes.

(Testimony of James Morrison.)

Q. Anybody else? A. No.

(An adjournment was here taken until Thursday, October 26, 1911, at 10 A. M.) [423½]

October 26th, 1911.

[**Testimony of James Morrison, for Respondents.**]

JAMES MORRISON, called for the respondents, sworn.

Mr. LILLICK.—Q. What is your name, age, and occupation?

A. James Morrison; age, 41; occupation, machinist.

Q. Mr. Morrison, have you ever seen the dredger "Richmond No. 1"? A. I have.

Q. Where was the dredger the last time you saw her? A. Off the Atlas Gas Engine Works.

Q. Do you remember the year? Was it on or about January or February, 1911?

A. I was just wondering whether it was this year or last year. It was around Christmas time. I can almost fix the date, because I happened to have an injury occurring on the 31st of October last year and I was off work for about six or seven weeks, so that when I returned it was somewhere in the neighborhood of the new year.

Q. What has been your experience with gas engines, Mr. Morrison?

A. Gas engines simply? Probably 10 years.

Q. And in the line of machinist?

A. 27 years.

Q. Where have you worked, Mr. Morrison?

(Testimony of James Morrison.)

A. During all these 27 years?

Q. Yes, approximately?

A. The first three years of that was in Scotland. From 1887 to 1890 I was with the Pusey-Jones Company of Wilmington, Delaware.

Q. What business were you in?

A. Manufacturing marine engines and gas engines.

Q. What was your business with them?

A. Machinist, or rather for the first two years probably it might be an apprentice.

Q. And after working at Wilmington, Delaware, where did you go? [424] A. To San Francisco.

Q. What has been your experience with gas engines during the last 10 years?

A. In the last 10 years?

Q. Yes.

A. Let me see. I put in three years solely and purely, you might say, in the gas engine business, but it was more than 10 years ago. But if that does not count—

Q. Yes. I am speaking of your experience, and in a general way, approximately, give us your experience.

A. It is easy enough to understand that a man who has put in 27 years of business that requires him to go to 101 different places, that is, approximately, I might say 501 or 1001, it would be all the same; it would be rather difficult to date and enumerate them all, for the reason that in working for one company a man may be sent to an outside job,

(Testimony of James Morrison.)

he may be sent to a great many outside jobs in various parts of the country, and in that way he would have quite a time segregating all the various points that he had worked at. From 1895 to 1898 I worked for the Harding Gas Engine Company of San Francisco. From 1906 to 1907 I worked for the Reliance Gas Engine people in Oakland. During a part of 1907 I worked for the Union Gas Engine people in Oakland. From 1909 to 1911 I worked for the United Iron Works people in Oakland who also built gas engines.

Q. For whom were you working in January, 1911?

A. For the United Iron Works in Oakland.

Q. What occasion did you have to go to the dredge "Richmond No. 1"? Why did you go?

A. The United Iron Works people sent me in company with another employee of that firm to go and install two engines. We got to the dredge and found two Samson gas engines, which under the [425] direction of the engineer in charge we were to put into working condition.

Q. What day did you commence work, if you remember? A. I believe it was on Monday, at noon time.

Q. And what day did you quit work on that job, if you remember?

A. It was Saturday, at noon time.

Q. During that time how many men were working on the installing, repairing and overhauling of those engines?

A. There was the engineer, and his assistant.

(Testimony of James Morrison.)

There were the two men from the United Iron Works, of which I was one.

Q. During the time you were overhauling the engines what, if anything, did you do in the way of repairing the engines, if you remember?

A. The first work entrusted to me, and the man with me, was to take all the valve gear down to take the valve off. The idea of taking one of the valves off, in the first place, was instigated because of outward indications showing that the gasket was not in good condition. On taking that valve off, or valve box, we noted that the valve in that one was not in very good condition. The engineer instructed the man with me to grind in all the valves—the inlet valves.

Q. Was this done?

A. That was done. On account of the condition of the first one taken off we overhauled them all.

Q. Did you take off all the valves on the two engines? A. We did.

Q. What was the condition of the gasket, and what was done about the gasket?

A. We put on new gaskets.

Q. What was done about regrounding the valves, if anything? [426]

A. The valves were all reground.

Q. What was done about adjusting them after their being reground?

A. The adjusting of the valves would be a matter that would come after the engine was in condition to run.

(Testimony of James Morrison.)

Q. And what was done about the mechanism attached to the valve—the cam shafts?

A. Everything was limbered up—oiled up. Sometimes machinery of all kinds will rust, especially machinery exposed to salt air.

Q. What did you do about rust, if there was any on the engines?

A. There is only one way to do with anything that rusts. It is liable to stick, and has to be taken apart, thoroughly cleaned and put together again.

Q. Was that done? A. That was done.

Q. All of the parts that were rusted?

A. All of the parts; all of the working part of the valve mechanism.

Q. Did you, during that time, look for broken springs and bolts?

A. That came under the head of all machinery. When a machinist is sent to repair, it is part of the business that a competent machinist does not have to be told to do. He does it.

Q. Was that done on this occasion?

A. That was done on this occasion.

Q. After doing what you have said you did, what instructions did you receive, and what did you do with regard to the cylinders and cylinder heads?

A. The engineer in charge told me personally to take off the cylinder covers, which I did. The idea of taking off the cylinder covers was to notice the condition of the cylinders.

Q. What was the condition of the cylinders?

(Testimony of James Morrison.)

A. The condition of the cylinders was very good.
[427]

Q. What, if anything, did you do with reference to using a caliper on the cylinders?

A. I calipered the cylinders to see what condition they were in with the anticipation of probably having the job for the firm I was working for to bore them out.

Q. And in what condition were all of those cylinders?

A. They were in such good condition that we could not get a job for our firm. They were pronounced to be in first-class condition.

Q. Did you examine all of them?

A. All of them.

Mr. TAUGHER.—Q. The cylinders were all in first-class condition.

A. The cylinders were all in first-class condition. I want to explain what first-class condition means in gas engines.

Mr. LILLICK.—Q. I want you to go on in that way.

A. If a steam engine was scored, especially in a horizontal engine where the wear is all on the bottom of the cylinder, that engine would still continue to run probably without very much regard to economy of fuel, but in the gas engine where the scoring of the cylinder would allow the compression to escape that engine would be practically useless, so that in a gas engine where the statement is made that the cylinders are in first-class condition it means that they

(Testimony of James Morrison.)

are in first-class condition—first-class workable condition.

Q. What, if anything, did you do with regard to the pistons? A. The pistons?

Q. Yes. Was any examination made of them?

A. The pistons were just examined.

Q. And what condition were they in?

A. They were in good condition. [428]

Q. What, if anything, did you do in reference to the connecting rods?

A. The connecting rod brasses were taken off to note the condition of the crank-pin. The crank-pins were pronounced in good condition, and the brasses were adjusted to the pin, and put back.

Q. Were you able to see the crank-shaft about the bearings to know whether there were any cuts or scores upon it?

A. The engineer instructed the man with me, and myself, to take off the covers, that is the engine-bearing covers, because in almost any engine it is possible to have the crank-shaft running too loose, and it is often necessary to see what condition both the cover and the crank-shaft is in. To ascertain those conditions those covers were taken off, and there was nothing worthy of note except that they were in the same general condition as an engine when it is classed in fair working condition.

Q. What, in your opinion, speaking from your experience as a gas engine man, Mr. Morrison, would be the effect of a cut or score of 1-32d of an inch in depth on the crank shaft?

(Testimony of James Morrison.)

A. Such a score as that would not cut any figure with any crank-shaft, or any bearing whatever. It is a matter that can be found in almost any engine.

Q. Would you say that the crank-shaft would be seriously impaired by reason of a cut of that depth?

A. It would not affect the crank-shaft practically to any extent, no more than it might convey to the eye of a novice that something was wrong. To a practical man it would not convey anything.

Q. How many fly-wheels were there on those two engines? A. Two fly-wheels. [429]

Q. One on each engine?

A. Let me see. There were two fly-wheels; yes.

Q. Did you look at those fly-wheels to see whether or not there were any cracks in them?

A. I can assure you if I noted any cracks on those fly-wheels I would never have been on that boat when they started to run.

Q. How long would a fly-wheel last with a crack in it after the engine started?

A. A fly-wheel with a crack in it—with a serious crack in it—anything that would tend to weaken the fly-wheel round the spokes, I do not think any life insurance company would write out a policy on a man that handled it.

Q. Any cracks on the hub?

A. No, sir; I did not notice any cracks on the hub.

Q. After you had finished overhauling the engines do you know whether or not they were started?

A. They were started.

Q. How long were they worked?

(Testimony of James Morrison.)

A. For a few moments.

Q. Were they shooting on all six cylinders?

A. Yes, sir, on all six cylinders.

Q. May I ask you what your instructions were with reference to the overhauling, and the condition you were putting the engines in?

Mr. TAUGHER.—I object to the question on the ground that it is incompetent, irrelevant and immaterial. I do not care what his instructions were.

A. The matter of fact being sent to any job by the firm by which I was employed is, that when a man is sent on a job—this one particular job is but an incident—

Mr. TAUGHER.—I object—

Mr. LILLICK.—Answer the question, Mr. Morrison, just as you [430] have started in your own language.

Mr. TAUGHER.—I object to long explanations about what the custom is. The testimony has nothing to do with this case, but just what he did on the engines.

A. All right. I will answer as to this particular job. I was sent as a mechanic to overhaul and install those engines, and put them in first-class condition subject to the orders of the engineer in charge. When my work was completed after the engines had been run I returned to the shop which sent me to the job.

Mr. LILLICK.—Q. Were the engines put in first-class condition?

A. They were put in first-class condition to the

(Testimony of James Morrison.)

best of my knowledge.

Q. Do you remember how many revolutions the engines made after they were running, after you finished overhauling them?

A. I stated a few minutes ago the engines would only run a few moments, because there was no steam on in the boiler. There must be steam on in the boiler to start the circulating pump that circulates water through the gasoline engine, therefor they were only run a few moments. While an engine is only running a few moments it is not practicable to test its speed, and there was no speedometer to my knowledge on the boat, or on the dredger.

Q. Do you remember whether or not the engines were connected with the pump while they were working?

A. Do I remember whether they were connected with the pump?

Q. Yes. A. No, sir.

Q. You do know, however, that they ran for a few minutes? A. Yes, sir.

Q. How many minutes to the best of your knowledge?

A. Well, they ran for a few minutes on several occasions. [431]

Q. They ran more than once then?

A. Yes, sir.

Q. Was that the end of the job?

A. That was at the end of the job.

Q. For what purpose?

A. To ascertain that everything was in first-class

(Testimony of James Morrison.)

condition before the men hired from the United Iron Works were told to return to the shop.

Q. You have stated that the cylinders did not need reboring. Do you remember from the examination you made of the walls of the cylinders whether they would have stood reboring if it had been necessary, whether the walls of the cylinders were thick enough?

A. Yes, sir, they would have stood reboring. The amount of metal taken out of reboring a cylinder is not great.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. TAUGHER.—Q. Where are you working now, Mr. Morrison?

A. For the past three months I have not been working at the machinist trade.

Q. What are you working at?

A. I am doing some work for the Machinists' Union in Oakland.

Q. What is the work you are doing?

A. In the capacity of business agent.

Q. Business agent?

A. For the Machinists' Union of Oakland.

Q. What are the duties of a business agent of the Machinists' Union?

A. Collects dues and assessments of its membership and goes to all the various shops when he is called upon to adjust small grievances, or whatever the occasion may require.

Q. Does that take you in the shops of the Southern Pacific?

(Testimony of James Morrison.)

A. No, sir, not connected with the railroad shops.

[432]

Q. How long have you been doing that?

A. What is that?

Q. How long have you been in that position?

A. Three months. My tools and overalls are still in the United Iron Works. It is probably only temporary.

Q. How long did you work at the United Iron Works? A. 18 months.

Q. What was your position there?

A. Machinist.

Q. Before you went to the United Iron Works where did you work?

A. Before I went to the United Iron Works?

Q. Yes.

A. For probably a year previous to that time I was engineer for the Lamoine Lumber Company in Shasta County.

Q. That is running a stationary engine for them?

A. Running a stationary engine for them; electrician and machinist; general utility man on jobs of that kind.

Q. What were you doing there, running the engine? A. Running the engine.

Q. Where were you working just prior to working in the lumber camp?

A. Just prior to that I was working for a couple of men who worked in Mr. Cutting's shop at Point Richmond building oil engines at Marshall Brothers. I was with them during the time they were there,

(Testimony of James Morrison.)

about six or eight months.

Q. Where was that? A. Point Richmond.

Q. What was your position? A. Machinist.

Q. A sort of helper?

A. No, sir, I was a machinist.

Q. Prior to that time what were you doing? For whom did you work?

A. For the Richmond Machine Company.

Q. How long did you work for them?

A. A few months; not very long.

Q. Who did you work for prior to that?

A. Before I went there? For the Reliance Gas Engine people. [433]

Q. How long did you work for the Reliance Gas Engine people? A. About a year.

Q. What was your position with them?

A. A machinist.

Q. How many machinists did the Reliance Gas Engine people employ?

A. At that time they hired about eight or ten, they varied according to the business on hand.

Q. How long ago was it that you worked for the Reliance Gas Engine Company?

A. During 1906-1907.

Q. Since then you have not done any gas engine work? A. Since which time?

Q. Since you worked for the Reliance Gas Engine Company?

A. For the United Iron Works.

Q. That is a small part of their business, is it not?

A. They are also agents for the St. Mary's gas engine.

(Testimony of James Morrison.)

Q. They do very little gas engine work over in their shops? A. They are going largely into it.

Q. I am talking of during the time you were over there. A. That is the time I am referring to.

Q. They were not largely in it at the time you were there, were they?

A. I built and completed just previous to going on this job a 75 horse-power double opposed engine, worked on it all the time, testing it.

Q. You built it?

A. I built it—I did not build it individually. I had charge of the work.

Q. What was your position?

A. I had charge of that engine.

Q. Who planned the engine?

A. It was designed by the designer from the Union Gas Engine Works.

Q. You constructed the various parts, did you?

A. I assembled the various parts; that is to say, the man who [434] has charge of the work and superintended the men—doing the other assembling work—the erector.

Q. How many men does it take to assemble a new gas engine? A. Shall we classify the boys as men?

Q. No. How many machinists does it take to assemble a 75 horse-power gas engine?

A. Four or five men worked on the job at various times; three or four approximately.

Q. How many boys?

A. Now, gentlemen, there is a question—

Q. Just answer.

(Testimony of James Morrison.)

A. I cannot answer such a question as that.

Q. If you cannot answer say you cannot.

A. I can answer in a manner which does not apply to the question whatever.

Q. Just answer the question.

A. One or two or three boys. Maybe they would work one day and be off the next day. Say one boy.

Q. If you cannot answer say so.

A. Some of these questions are asked in an impracticable manner without relation to a machine-shop.

Mr. LILLICK.—Let me instruct you, Mr. Morrison, when the counsel asks you a question, if you do not understand it, say so, and ask him to repeat the question. A. All right.

Q. If you do understand it reply to it, and make your answer in your own way. If your answer is not according to what Mr. Taugher thinks it ought to be, he has the privilege of asking a further question. So, in each case reply to the question to the best of your ability, and in your own language.

A. All right.

Mr. TAUGHER.—Q. Were you ever foreman in any of the shops [435] in which you worked?

A. No, sir.

Q. The highest position that you attained at any of those times was just a machinist?

A. A charge man; a man that is on the floor, and has charge of the work under a general foreman. You may classify it as assistant foreman.

Q. What were your wages in the United Iron Works? A. \$3.75 a day.

(Testimony of James Morrison.)

Q. You worked for them how long?

A. About 18 months.

Q. Did you ever have anything to do with any other gas engines besides this one that you assembled?

A. Oh, yes.

Q. What?

A. In the line of work of going out on the outside jobs, and several little jobs. I worked on two St. Mary's.

Q. Just give us the particulars of those two jobs that you worked on besides the gas engines?

A. In the warehouse of the United Iron Works. One is used to run a plant, which is installed there.

Q. Never mind what they were running for. I will ask you about that if I think it pertinent. I want to find out what your experience was outside of this one gas engine that you assembled. What other experience did you have with gas engines while you were working for the United Iron Works besides this gas engine that you assembled that you speak of?

A. They had a dozen gas engines on the floor on which I worked.

Q. I am talking of your experience?

A. I am talking of my experience now. I say they had a dozen engines on the floor on which I worked in the United Iron Works.

Q. You say that you assembled one gas engine?

A. I say that I assembled that one particularly because it was a new design, that is all. They built no more of that kind. [436]

Q. Were you ever sent out to repair a gas engine

(Testimony of James Morrison.)

before you went out on this dredger?

A. Yes, sir.

Q. Where? A. For this one company?

Q. For any company. Confine yourself first to this company so that we can get your experience here. Confine yourself to the United Iron Works?

A. Yes, sir, I repaired a gas engine at Stege; just adjusted it.

Q. Who did that engine belong to?

Mr. LILLICK.—Objected to as immaterial.

A. I don't know the name of the firm.

Mr. TAUGHER.—Q. Don't you know for whom you were doing the work?

A. Yes, sir, there was a gas engine out there, but who the firm was I don't know.

Q. Where was the gas engine situated?

A. At a firm at Stege.

Q. What kind of a firm?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. I believe it was a match firm there.

Mr. TAUGHER.—Q. A match firm?

A. Yes, sir.

Q. What kind of engine was that?

A. I don't remember the make of it.

Q. You don't remember the make of it?

A. No, sir.

Q. How big was the gas engine?

A. I should say about 10 or 15 horse-power.

Q. And you were called on to adjust it, you say?

A. Yes, sir.

(Testimony of James Morrison.)

Q. Did you make any repairs to it?

A. Just to see what was wrong.

Q. Name them?

A. I did not make any repairs to the engine, but just to adjust it.

Q. What other gas engines were you sent to repair while you [437] were working for the United Iron Works?

A. I did not go out on any other jobs outside of that one that I can remember now. I am liable to get it confused with other firms.

Q. Take plenty of time and do not get confused. We do not want you to state anything except what is not absolutely so. That is the only repair work that you did while with the United Iron Works?

A. Outside of this one; outside of the Samson.

Q. During what period were you working for the United Iron Works? A. From 1909 to 1911.

Q. And since you left the United Iron Works where have you been working?

A. For three months as business agent for the Machinists' Union at Oakland.

Q. Prior to working for the United Iron Works you worked at this logging camp?

A. Yes, sir, at Shasta County.

Q. Prior to that you worked in a machine-shop at Richmond?

A. Yes, sir. I fix those dates on account of leaving there to go to Shasta County from Richmond.

Q. While you were working for the United Iron Works you assembled one gas engine?

(Testimony of James Morrison.)

A. I assembled more. I say they had a dozen gas engines on the floor.

Q. While you were working for the United Iron Works you had charge of the assembling of one gas engine?

A. Of a certain kind that they never built any more of.

Q. When was that?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. That question can be answered easy enough.

Mr. TAUGHER.—You have introduced him as an expert, and I am going to find out how much of an expert he is except of his own idea. [438]

The WITNESS.—That is all right.

Mr. LILLICK.—You will find out at your peril.

Mr. TAUGHER.—I will take care of that.

Q. Answer the question.

A. They built this engine. They lost a lot of money experimenting on this particular engine. It was a new kind that they were going to build lots of.

Q. Read my question, Mr. Reporter.

A. They built this engine some time between September of last year and March of this year—between Sept., 1911, and March, 1911.

Q. When was it assembled in the shop?

Mr. LILLICK.—Objected as irrelevant and immaterial.

A. During all this time.

Mr. TAUGHER.—Q. During all that time it was assembled?

(Testimony of James Morrison.)

A. It was assembled half a dozen times—one engine—it was assembled half a dozen times in experiments and improvements.

Q. Did you assemble it each time it was assembled?

A. Approximately, yes; installing it, and running it in the shop.

Q. When did you last assemble the parts, and run this engine that you speak of?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. When?

Mr. TAUGHER.—Q. Yes.

A. Last March.

Q. Was that before or after you looked at the Samson engines on this dredge?

A. Afterwards and before also. During that time that it was being built and assembled quite a number of times.

Q. Did you have charge of the assembling of those engines for the United Iron Works?

A. Until I left the firm, I had charge of the gas engine work as I stated of these dozen engines that they [439] put on the floor, but of another type.

Q. I don't care what type they were.

A. We will cut out the type.

Q. Did you ever assemble another gas engine for the United Iron Works? A. No, sir.

Q. The only gas engine that you ever assembled for them was that one of a peculiar construction?

A. Of that one construction, and parts of the

(Testimony of James Morrison.)

dozen are on the floor now.

Q. You would do whatever piece of work was assigned to you by the foreman, was that it?

A. No, sir.

Q. Tell us what you did outside of what the ordinary machinist does towards the construction of those gas engines that were on the floor of the United Iron Works.

A. The foreman brings me the drawings and gives me the job. When any further instructions are required I go to the foreman for information.

Q. Do you want us to understand that you constructed those engines yourself, or just various parts?

A. I made the statement that I had charge of the work.

Q. Of the one gas engine of the peculiar construction you have mentioned, I am talking of?

A. No, sir; the others also.

Q. You had charge of the construction of the other gas engines on the floor as well as this one of peculiar construction?

A. I have already stated, and you agreed to it, that there was a foreman. I want a definition of the words "charge of the work" before we go into detail.

Q. You say you had charge. I want you to explain what you mean by having charge of the work.

A. I made the statement that I was under orders of the foreman. [440] He assigned me this particular duty—

Q. What duty?

(Testimony of James Morrison.)

Mr. LILLICK.—Let the witness finish his answer.

A. (Contg.) —of charge of assembling these engines subject to his instructions if necessary. The statement that I am general foreman, or complete man in authority, has never been made. I want that in the record right there.

Mr. TAUGHER.—Q. I do not say it was. I just want to know what the fact is, and not anything else. Did you have charge of assembling this one engine of peculiar construction?

Mr. LILLICK.—I object to the question on the ground that it has been asked, and replied to, at least three times, and on the further ground that it is immaterial and irrelevant, and unduly encumbering the record.

A. The question has been answered.

Mr. TAUGHER.—It is not for you to tell us what has been done. Answer the question.

A. I have answered the question three or four times.

Q. Answer it again.

Mr. LILLICK.—I object to the question as immaterial and irrelevant, and also it is unduly encumbering the record.

Mr. TAUGHER.—He said that he has sufficient experience to testify as an expert. I want to find out what his qualifications are.

A. Did I make a statement that I was a machinist?

Q. Just answer the question. Read the question, Mr. Reporter.

(The Reporter reads the question.)

(Testimony of James Morrison.)

A. I did, subject to the orders of the foreman.

Q. Can you tell us what parts of that engine were constructed?

A. You asked a moment ago—I cannot answer that question but [441] by asking another—you asked me a moment ago if I had charge of assembling this engine. If you will define to me there is any difference between assembling and constructing we can proceed, otherwise it is an impossible question.

Q. I take it to mean by assembling the parts, after the parts are made they are put together and put in place?

A. During the time these parts are being assembled they have to be fitted; a considerable number of the parts have to be fitted. This is classed as assembling.

Q. Were your duties to simply assemble these parts, or adjust the parts and then put them in place?

A. They were to fit the engine together. The parts of the engine have to be fitted after they come from the machine, and there has to be considerable vice floor and general construction work performed. This is defined as assembling a gas engine.

Q. You did that in relation to this one gas engine of peculiar construction? A. Yes, sir.

Q. Where is that engine now?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. It is running a plant somewhere up in Oregon.

Mr. TAUGHER.—Q. Did you have charge of the assembling of any other of the engines on the floor

(Testimony of James Morrison.)

of the United Iron Works during the time you were working there?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and it has been answered at least several times already.

A. Until I left the employment of the firm.

Mr. TAUGHER.—Q. Answer the question.

A. I did, until I left the employment of the firm. That answers it. [442]

Q. You had charge of the assembling of the other engines, did you? A. Yes, sir.

Q. How many other machinists were engaged in the assembling of those other engines with you of the United Iron Works?

A. I cannot answer that question.

Q. About how many?

A. I cannot answer that question.

Q. Did you have any authority over the other machinists, or was your position there with relation to that any higher than the other machinists that were engaged in the assembling of those engines?

A. The foreman of the United Iron Works will answer that question.

Q. I want you to answer it.

A. I have already stated—and I am not going to state it very many more times—that I received instructions from the foreman with regard to assembling these engines.

Q. Was there any difference in the instructions received by you in relation to those other engines than the instructions received by the other mechanics

(Testimony of James Morrison.)

on the floor?

Mr. LILLICK.—I object to Mr. Taugher having commenced another question before the witness had finished his reply to the question preceding this one. The witness was in the middle of his answer when Mr. Taugher interrupted with a question. I desire the former question, and that portion of the answer, as far as it had gone read to the witness, so that if he desires to further reply to it he may do so.

Mr. TAUGHER.—I object to Mr. Lillick making seeming objections to the question before I have finished with the question, and for the purpose of prompting, as I understand it, the witness. [443]

(The Reporter reads the testimony.)

A. (Contg.) The other machinists on the job took their orders from me.

A. Did you ever make estimates on the cost of repairs to be made on any gas engines?

A. No, sir, it is not my work.

Q. Then, before you were sent to install the Samson gas engines on the dredger "Richmond No. 1," you had never done a repair job on a gas engine?

A. No.

Q. Except this one job of adjusting the engine at Stege? A. No. Has there been any testimony—

Q. Answer my question.

Mr. LILLICK.—Go on with what you were going to say, Mr. Morrison.

A. I will have to have that question again.

Mr. TAUGHER.—The Reporter will read it to you.

(Testimony of James Morrison.)

(The Reporter reads the question.)

A. I have never made the statement that I was never sent on any other job.

Q. Were you ever sent on any other repair job?

A. Yes, sir.

Q. While working for the United Iron Works?

A. Yes, sir.

Q. Where were you sent? A. Stege.

Q. With the exception of the job on the engine at Stege were you ever sent out to do a repair job while working for the United Iron Works?

A. Only on the premises of the firm, outside of the Samson engines.

Q. You did not do any repairing at Stege, but adjusted it?

A. Just adjusted it. We will not count that job at all.

Q. The work on the Samson gas engines on "Richmond No. 1," was the [444] first repair job you were ever sent out to do?

A. From the United Iron Works, outside of their own plant? I said one or two. I had reference to their engines across the way in their warehouse.

Q. What did the repairs on those engines consist of that you mention now? Before you answer that question, let me ask you this: Can you tell me to whom those engines belonged that you mentioned that you did the repair work on on the premises of the United Iron Works?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

(Testimony of James Morrison.)

A. These were demonstration engines for the whole concern. It was to see that the engines would run before they were shipped.

Mr. TAUGHER.—Q. New engines?

A. Yes. Have I got any right to explain?

Mr. LILLICK.—You certainly have.

A. If a firm in selling mining machinery feels like putting up a plant of their own to demonstrate to men that want to buy—Mr. Cutting will understand it—they will show the whole working of a crusher, or it may be concentrators—they will show the whole thing in operation; and they had this gas engine installed there to show it in operation. Now, we can understand one another intelligently.

Mr. TAUGHER.—Q. I want you to answer my question and not to discuss matters. That is all I want.

A. All right. I am not here for my health by any means.

Q. When you first saw the Samson engines where were they?

A. Laying off the pier at the Atlas Gas Engine Works.

Q. And you had one man with you from the United Iron Works? A. Yes, sir.

Q. A machinist or helper?

A. A machinist. [445]

Q. When was that?

A. Some time around last year. It might have been in January.

Q. Cannot you fix it any more definitely than that?

(Testimony of James Morrison.)

A. I could with a little thought fix it almost approximately.

Q. Do it.

A. Am I at liberty to make this statement to show why I can fix this date?

Mr. LILLICK.—Certainly.

A. While in the employ of the United Iron Works at an outside job at Bay Point I was thrown from a buggy and got my arm dislocated. I was off work for several weeks, and before my arm had recovered its normal condition I went to work on the Samson engines, which would put it somewhere about ten weeks after the accident, which would make it sometime in the early part of January.

Mr. TAUGHER.—Q. Were you carrying your arm in a sling? A. For a few weeks.

Q. At the time you were working?

A. No, sir; the United Iron Works are not paying pensioners. It would be impossible for a man to work with one arm in the capacity of a machinist.

Q. You say your arm had not got back to its normal condition at this time?

A. If you understand anything about dislocation it takes sometime for the cords to straighten out.

Q. Who was the man with you?

A. John Niosi—John Noisy we called him.

Q. How do you spell it?

A. This is what I believe it to be N-O-I-S-I Noisy it is pronounced.

Q. Where does he live? A. I do not know.

Q. Is he still working for the United Iron Works?

(Testimony of James Morrison.)

A. I don't know. [446]

Q. How long were you working on the installation of those Samson engines on the dredger "Richmond No. 1"? A. At this one time?

Q. The only time you were working on the engine, or all the time you were working on them?

A. I worked on these engines twice.

Q. Twice? A. Yes, sir.

Q. When was the first time?

A. When they were first installed in the dredger.

Q. When was that?

A. When they were installed at Richmond. When I was working for Mr. Cutting's firm.

Q. I am talking of in January.

A. I want to make the statement that I worked on these particular engines on two different occasions.

Q. What did you do the first time?

A. Helped to install them, and doing such work as was necessary to be done in a machine-shop.

Q. You were working for Mr. Cutting, were you?

A. I believe it was called the Richmond Machine Co.

Q. When was that?

A. It must have been in the latter part of 1907.

Q. Confine your answer, now, to the time that you saw them in the early part of January of this year?

A. All right.

Q. How long did you work at the installing of those engines on the dredger "Richmond No. 1"?

A. From Monday noon until Saturday noon. The way I fix it Saturday is that we went back to the shop

(Testimony of James Morrison.)

and then went home, because we had worked some overtime during the week, and we could go home on Saturday afternoon without any loss of pay for the week. That was why we went home on Saturday afternoon. The work was finished. [447]

Q. You had this other man from the United Iron Works? A. We were together during the time.

Q. Who else was helping you install the engines?

A. The engineer in charge, and his assistant.

Q. Who was the engineer in charge, do you know?

A. Mr. Barker, is that his name?

Mr. LILLICK.—Mr. Barker.

Mr. TAUGHER.—Q. Who was his assistant?

A. I don't know the assistant's name. I did know it at the time.

Q. It took you five days—

A. Monday noon to Saturday noon, five days, not including the overtime.

Q. Where was the dredger when the engines were installed?

A. Lying off the pier at the Atlas Gas Company. We had to go from the pier on the first occasion in a boat. That is why I remember the pier so well. On the other occasion that we went we went over the top of some suction pipes that were laying there on the pier.

Q. Where were the engines when you first saw them? A. On the dredger.

Q. On the dredger? A. Yes, sir.

Q. You did not see them put on the dredger?

A. No, sir.

(Testimony of James Morrison.)

Q. Were they on the deck, or down?

A. On their foundation.

Q. They were on their foundation when you saw them? A. Yes, sir, on their foundation.

Q. You do not know who put them there?

A. I am stating what happened when I arrived on the dredger.

Q. What happened previous to that does not concern me. Answer my question, will you?

A. I cannot answer that question.

Q. Read the question, Mr. Reporter. [448]

(The Reporter reads the question.)

A. No, Mr. Lawyer, you must excuse me. I am not used to lawyers' methods. When I find out what you want, you and I will understand each other, I presume. I don't mean anything.

Q. Never mind so much palaver.

A. That is all right. The blarney-stone is as good to me as it is to anyone else.

Q. They were bolted on their foundations when you saw them? A. Bolted on their foundations.

Q. All you had to do was to connect the piping with them? A. Oh, no.

Q. What else besides connect the piping did you have to do?

A. The first work entrusted to me was by this Mr. Barker, or Baker. He instructed both me and the workman with me to work on the valve gear of the engine, and to take it all apart, to get everything in good working order, and put it back. But while taking it off we noted that one of the gaskets on one

(Testimony of James Morrison.)

of the valve covers was not in good condition, so we took it off. After taking it off we noted the condition of the valves, and they were ground in, and from the condition of the one that was taken off we concluded that it would be better to take them all off, and do the same amount of work.

Q. How long did it take to grind in the valves?

A. I cannot remember at this time.

Q. Did you do the grinding in, or the man who was with you?

A. I did some of it. We both worked on it.

Q. Where did you take those valves to grind them in? A. On to another part of the dredger.

Q. You did it on the dredger. You did not have to take them back to the machine-shop?

A. No, sir, nothing was taken back to the machine shop, except probably some piping. I don't know whether [449] they had that done at the United Iron Works. I guess they did.

Q. What new parts did they put on the engines?

A. There were two new carbureters put on the engines that I can remember, and where there were new nuts, or new bolts required they were put on new, or here it was necessary to put in a new piece of pipe in the circulating water-pipe, it was put on new. Outside of that I believe all the original material was in as good condition as when put on.

Q. Those were all the new parts that were put on at that time?

A. That I can remember, the new carbureters, and the new nuts, and new bolts, minor details, and I

(Testimony of James Morrison.)

believe a couple of new springs on the inlet valves.

Q. Anything else new put on?

A. There was a new lever put on, I understand.

Q. Where?

A. A new clutch lever. There was also some changes made in the piping from the gasoline tank to the carbureter.

Q. Anything else?

A. That is all I can remember at the present time?

Q. You worked on or about those engines for five days? A. Yes, sir.

Q. You started them more than once?

A. I should say I saw them running about three hours.

Q. There was no circulating water there at all.

A. Only a few moments.

Q. Would you run them for five minutes?

A. Approximately about five minutes.

Q. Was there any circulating water on the engines at all during any of the time that you run them? A. No.

Q. Without the circulating water being on there could you tell whether the gaskets leaked or not?

A. Without circulating water?

Q. Yes. A. I presume so; yes. [450]

Q. How could you tell?

A. It would be a much better test if there was water in it, all right.

Q. Could you possibly tell without water being in there?

A. Whether the gaskets would leak or not?

(Testimony of James Morrison.)

Q. Yes.

A. No, sir, you could not tell. Let me understand it right—whether the water would be leaking into the cylinder or not? You could not tell without the water being there.

Q. Do you know Mr. Matthew W. Musladin, foreman of the Doak Gas Engine Company?

A. I know him personally.

Q. How long have you known him?

A. Only personally for a few months.

Q. How long have you known him by reputation?

A. Probably for two years.

Q. Would you say that he was an expert gas engine man? A. I would state so; yes.

Q. Of the first rank?

A. I could not hardly rank any man.

Q. Now, you did not take down those engines when you went over there to connect up the piping on the Samson gas engines, did you?

A. We took down a great number of parts of them.

Q. Now, Mr. Musladin, who had taken down those engines for the purpose of estimating the cost of repairs, which he with his three men spent a whole day examining for the one purpose of discovering what was necessary to put those engines in repair, about six months before the time that you saw the engines, according to your testimony; that is, he saw them in October, 1910, and took them down, and apart, and for no other purpose than for the purpose of discovering their condition, and what would be needed to repair those engines, said in his report, and to which

(Testimony of James Morrison.)

he is [451] testifying that the "Crank-shafts are badly cut on journals and at least one engine needs rebabbitting." Do you know whether that statement is correct, or otherwise?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and not proper cross-examination.

A. I would make the statement that I do not believe that statement to be true from the condition that I saw of these engines, if these engines are the same engines that Mr. Musladin saw for the very reason, if you will allow me to explain, that I would only have been too glad to have had the work for the United Iron Works to do.

Q. Mr. Perry testified that—

Mr. LILLICK.—Q. Were you through with your answer, Mr. Morrison? A. Yes, sir.

Mr. TAUGHER.—Q. Mr. Perry testified that they were sent to the United Iron Works merely for the purpose of having the tubing installed, not for general repairs?

Mr. LILLICK.—We object to that as not being a correct statement of Mr. Perry's testimony—

Mr. TAUGHER.—That is my remembrance of the effect of it. It was either Mr. Perry or Mr. Cummins that testified they were only sent there for the purpose of having the tubing installed.

Mr. LILLICK.—(Contg.) —and being immaterial and irrelevant, and without any foundation in fact in the testimony, for the reason that the engines were never sent to the United Iron Works, and when

(Testimony of James Morrison.)

repaired and overhauled were on the dredger, "Richmond No. 1."

Mr. TAUGHER.—Q. Did you see the crank-shaft?

A. Yes, I did.

Q. Did you examine the journals? Yes, sir.

Q. You can state whether or not those crank-shafts were cut on [452] the journals?

A. Yes, I could state.

Q. And you examined them for the purpose of discovering that, did you? A. Yes, sir.

Q. When your instructions were merely to put in the tubing on the engines?

A. I never got no instructions to put in the tubing on the engines, or anything else. My instructions were, when first going on the job by the engineer in charge, to take down the valve gear; after completing that to take off the cylinder covers; after completing that to look at the piston, examine the condition of the cylinders, take off the covers on the bearings, and note their condition with a view to ascertaining the work to be done either on the dredger or in the shop of the United Iron Works. That is the position I take.

Q. Mr. Musladin in his testimony states that two of the fly-wheels had been cracked. Is that correct?

A. No, sir, not to my knowledge. I would not have remained on the dredger with cracked fly-wheels if I had known it.

Q. Did those fly-wheels have bands shrunk on them? A. Not that I can remember.

Q. If they had been on there when you examined

(Testimony of James Morrison.)

them would you have seen them?

A. Undoubtedly I would.

Q. You would say that on those fly-wheels there was no steel bands shrunk on?

A. I could not make no such statement.

Q. Are there? A. I don't remember.

Q. Did you examine the fly-wheels?

A. I examined the fly-wheels, I examined every part of the engine.

Q. You examined every part of the engine?

A. Yes, sir.

Q. Are there bands shrunk on the fly-wheels, or are there not? A. I could not answer. [453]

Q. You don't remember? A. No, sir.

Q. Did you ever know?

A. Nothing peculiar caught my attention on the fly-wheels.

Q. Nothing peculiar?

A. Nothing peculiar. That is where I base my statement on. If I saw anything peculiar undoubtedly I would have remembered it. Nothing peculiar caught my attention with regard to the fly-wheels.

Q. There were neither cracks in any of the fly-wheels, nor bands on any of the fly-wheels, on those engines. A. Not that I can remember.

Q. Mr. Musladin states that "Nearly all of the studs have been loosened by the action of the salt water and will screw out easily and in some cases the casting is hardly thick enough to stand retapping." Is that correct, or otherwise?

A. Does Mr. Musladin enumerate the studs.

(Testimony of James Morrison.)

What stud does he refer to?

Q. "Nearly all of the studs have been loosened by the action of the salt water and will screw out easily?" A. That is, in both engines?

Q. Yes. A. I did not notice those defects.

Q. He says "The valve gear is so worn and rusty as to necessitate its entire replacement."

A. That valve gear run those engines after Mr. Musladin's statement.

Q. It run for five minutes you say as a limit?

A. Approximately five minutes.

Q. When the engines were running, were the engines connected to the cutting gear of the dredger?

A. No, sir.

Q. Were they connected to the pumps?

A. Not while I saw them running. The engines were run after I [454] left too probably.

Q. Mr. Musladin said there were twelve valves and parts needed?

A. Those valves were ground in, and put in good condition.

Q. He says, "The cams, etc., and rocker-arms need replacement?"

A. Well, I would like to reply to that by stating, if in the judgment of even a novice he could conceive of all these parts of an engine needed being replaced, and yet there was the fact that those engines run if only for a minute.

Q. He said, "Cylinder head castings are thin and rusted away around water outlet, making it impossible to maintain a water tight joint." Do you know

(Testimony of James Morrison.)

anything about that?

A. There was no water put in the engine while I was there, and anything appertaining to the water end of it would make it impossible for me to answer, to give any opinion on it.

Q. He said, "Crank brasses will need refitting. Also piston brasses."

A. I refuse to answer, because the man who spoke about piston brasses was either an imbecile, or did not understand anything about gas engines, because I never in the course of 27 years' experience ever heard of piston brasses. I do not know what piston brasses are. I do not understand what Mr. Musladin or any other man would mean by "piston brasses." It is complete Greek to me.

Q. He said that "all piping was practically useless."

A. Well, to make the statement that all piping was practically useless is not correct because I personally fitted up the water piping around the engines with the additional parts supplied, but with no additional new piping as far as I can remember. The exhaust piping from the engine to the discharge overboard was in bad condition, and if Mr. Musladin had referred to the exhaust piping, which is probably more exposed, his statement would be [455] correct. The exhaust piping was in bad condition, the threads were eaten away, and so on, and so forth, on account probably of lying around in the salt water.

Mr. LILLICK.—Q. Did you do anything with that?

(Testimony of James Morrison.)

Mr. TAUGHER.—You can ask him that on re-direct. I would rather that you did not break in on my cross-examination at this particular time.

Q. He says, “Valve chamber castings are eaten away around water passages, and exhaust valves are worn out.”

A. No, sir. I would feel like contradicting that statement because I did not find it so from my personal observation.

Q. He said, “30 piston rings were needed.”

A. Well, if Mr. Musladin wanted to supply work to the Doak Gas Engine Works probably that might be so. I could not find occasion to give that order to the United Iron Works, because we did not see the necessity of it.

Q. He said, “6 igniters were necessary.”

A. No, sir, not from my observation.

Q. How many would you say were necessary?

A. They were repaired, and none were necessary to be supplied as new.

Q. Notwithstanding the fact that those had not been used for a long, long time?

A. I understand. I remember when they were first run. I saw those engines turned over when they were first installed; I know exactly when they were run, although I don't know how much use they have received.

Q. What would it be worth to test those engines—make a proper test of the engine to see whether or not they were in good working order, and would do the work that they were intended to do [456]

(Testimony of James Morrison.)

on the dredger "Richmond No. 1"?

A. What would be the approximate cost?

Q. Yes. A. To put them in condition—

Q. Testing them? A. By testing them?

Q. Did you ever test any engines?

A. Let me answer your question.

Q. I withdraw the question.

A. I am going to answer that.

Q. I withdrew the question until after I have asked one or two questions prior to that question.

Have you ever tested a gas engine? A. Several.

Q. Where?

A. In Wilmington, Delaware, where I worked for three years steady on the Clark Gas Engine. I have tested engines for the Reliance Gas Engine—

Q. (Interrupting.) How long ago was this testing done?

Mr. LILLICK.—The witness was about to continue his answer when he was interrupted by counsel. I insist on the witness being allowed to complete his answer.

A. (Contg.) From 1887 to 1890 I was engaged in building and testing gas engines.

Mr. TAUGHER.—Q. Did you take down those Samson gas engines when you went aboard the dredger? A. Did I take them down?

Q. Yes.

Mr. LILLICK.—Objected to as having been answered already. A. Parts of them.

Mr. TAUGHER.—Q. What parts did you take down?

(Testimony of James Morrison.)

A. I took down the valve gear on both of the engines; took down the cylinder covers; examined the pistons and cylinders.

Q. Did you take them out? A. Yes, sir.

Q. Take out the pistons?

A. Yes, sir, I took off the connecting rods, took off the covers of the bearings, and approximately dismantled the engines, with the exception of taking the cylinders from the frames.

(A recess was here taken until 2 P. M.) [457]

AFTERNOON SESSION.

JAMES MORRISON, cross-examination resumed.

Mr. TAUGHER.—Q. How long could those engines have run without water in them?

A. How long could they have run?

Q. Yes; safely; without injury to the engine?

A. Well, I do not think, in my opinion, the time could be very well be determined, because it is not the custom to run engines but only a few minutes unless there is circulating water. The only material injury would be carbonizing the cylinders; of course a practical man determines that feature by the heat developed; as, for instance, the greatest efficiency, greatest power, is when the circulating water is going through the cylinders at boiling point; cold water is not absolutely necessary. The boiling point produces the greatest efficiency in gas engines.

Q. Would these engines work effectively, if they leaked?

A. Would they work satisfactorily if they leaked?

(Testimony of James Morrison.)

Q. Yes.

A. No, they would not; not with any water going into the cylinder, they would not work satisfactory. The present practice is to inject a little water, just a small amount of water to prevent carbonizing a drop or two in oil; that is a new method of preventing carbonizing the cylinders. But the water going in to the cylinders, it is a detriment, as far as that would go; it would not work satisfactory with water going in to any extent.

Q. When did you last see the Samson engines?

A. On the Saturday at noon time after completing the work, was the last time I saw them.

Q. That was in January?

A. Yes, sometime in January. [458]

Q. Are you getting expert witness fees?

A. Fees?

Q. Yes.

A. I don't know of any compensation whatever I am getting. I have no interest in the case personally any more than—

Q. I am asking just about your fees.

A. I make the statement no, I am not getting any fees whatever that I know of. I don't know that I will even get the 30 cents I expended to come over for as I had a little business over here on this side. That is to the best of my knowledge all the compensation.

Q. Is that all you intend to ask for?

A. I have no idea whatever of what I might be

(Testimony of James Morrison.)

entitled to by law or anything of that kind. I have no idea.

Q. Do you think that 30 cents, the return of the 30 cents would pay for the testimony you have given?

A. 30 cents? I have no idea of its value whatever, not from a commercial standpoint.

Q. Well, do you think your evidence would be worth more than 30 cents?

A. The commercial value of my evidence has nothing at all to do with me.

Q. That is talking as an expert witness.

A. Speaking as a man, a machinist, that has had 27 years experience.

Redirect Examination.

Mr. LILLICK.—Q. In your opinion, Mr. Morrison, would those engines have been damaged at all by running them five minutes without circulating water?

Mr. TAUGHER.—I object to that on the ground it is calling for the opinion and conclusion of the witness; he does not even claim he is an expert gas engine man.

Mr. SPILMAN.—A question of the same character was asked by you of him not ten minutes ago.

Mr. LILLICK.—Will you read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

[459]

A. No; positively no.

(Testimony of James Morrison.)

Q. Do you remember what condition the cams were in upon those engines after you finished overhauling them? A. The cams?

Q. Yes.

A. I have already made the statement that the valve gear, of which the cams was a part, was in fair good condition.

Q. Do you know whether those engines ever had any rocker-arms on them?

A. I never saw any rocker-arms on them.

Q. In your cross-examination you stated that the exhaust pipes or the exhaust pipe was in bad condition. Was that replaced or repaired, or anything done to it?

A. We tried to connect up some of that pipe and found the tread to be in such condition that we had to get some new pipe; where that pipe was secured, I don't remember: whether it came from the United Iron Works—I think it did—I don't remember.

Q. But the exhaust pipe was properly repaired?

A. The discharge overboard from the engines was; the exhaust discharge from the engine overboard was. I presume that is the question asked.

Q. Mr. Morrison, referring to Mr. Musladin's testimony and that report that was made; what explanation, if any, have you of the amount of work mentioned in there, he having been called to inspect that job for the purpose of finding out what would be necessary to overhaul the engines?

A. Can I give an estimate of the amount of work?

Q. Will you repeat the question, Mr. Reporter?

(Testimony of James Morrison.)

(The last question repeated by the Reporter.)

Would he or would he not be liable to over-estimate the amount of work necessary?

Mr. TAUGHER.—I object to that on the ground that it is suggestive, irrelevant and immaterial, calling for the opinion [460] of the witness on a matter on which he has no knowledge other than what the rest of us have.

A. I don't remember of the statement being made of how much Mr. Musladin estimated that at.

Mr. LILLICK.—Q. If Mr. Musladin's testimony was that the repairs would amount to \$2,446, would or would you not say that was a reasonable amount?

A. I would say that it was a very unreasonable amount; I would say it was such an unreasonable amount, that is, for the amount of work performed to run the engines that it was no estimate at all.

Q. If a man is sent out from an iron works or a gas engine repair-shop to look over a gas engine, in your opinion is the report of such a man one which would be looked upon as a fairly reasonable statement of the situation with reference to doing the work economically?

Mr. TAUGHER.—I object to that on the ground that it is irrelevant and immaterial, calling for the conclusion and the opinion of the witness, and not qualified to answer.

A. Shall I answer?

Mr. LILLICK.—Q. Yes.

A. The witness in question has had 27 years practical experience as a machinist, marine engineer,

(Testimony of James Morrison.)

stationary engineer, worked on land, marine and locomotives engines, and also on several types of gas engines, and kerosene engines, both assembling, overhauling—

Mr. TAUGHER.—I want to interpose an objection to the life history of this witness as being entirely irrelevant and immaterial and of no interest to anybody concerned in this case.

The WITNESS.—(Addressing Mr. Lillick.) Mr. Lawyer, has this witness got no reputation to uphold?

Mr. LILLICK.—Q. Will you continue with your answer, Mr. Morrison? [461]

A. (Contg.) The very fact that the witness was qualified by a reputable iron works to be sent on an outside job to install gas engines must have some bearing on his qualifications as a machinist and engineer.

Q. That is all right, Mr. Morrison. Continue now with your answer. Will you read my question, Mr. Reporter?

(The last question read by the Reporter.)

A. Yes. That report would be considered by the firm sending him, and the firm in question will always send an outside estimator to secure such work.

Q. And in making a report of that character, what, if anything, governs the man who makes the estimate, with reference to the character of that work upon which he reports?

A. The desire on the part of the man to secure for the firm employing him all the work that he possibly can.

(Testimony of James Morrison.)

Q. Have you ever worked as chief engineer on a dredger?

A. I worked for about six months. To be absolutely correct, four months, chief engineer on the Southern Pacific Dredger.

Q. Did they have gas engines for the motive power? A. No; they had steam engines.

Q. Mr. Morrison, you said on cross-examination that you had installed these Samson engines upon the dredger when they were first put on her. What was the condition of the Samson engines—

Mr. TAUGHER.—(Intg.) He did not say that. You had better ask him. Don't state anything inferentially, because, if he stated that, I want to know it—he has not, though.

Mr. SPILMAN.—Yes, he did so state.

Mr. LILLICK.—He did state so, Mr. Spilman, and I am going to have the Reporter read the question over. If Mr. Taugher wants to object to it then, he can. [462]

(The question repeated by the Reporter.)

Q. (Contg.) —when you had finished overhauling and repairing them in January of this year, with reference to their condition when you first installed them upon the dredger, considering reasonable wear and tear of those engines in the meantime, assuming that they were in continual use?

Mr. TAUGHER.—I object to that question on the ground it is leading and suggestive, calling for the conclusion and opinion of the witness, and embodying statements of the evidence that are not correct, and as

(Testimony of James Morrison.)

complicated and involved.

A. I know for a positive fact that those engines when first installed were such a bad job that there was considerable trouble in starting them, and it was necessary to send to the Samson Iron Works to get more expert knowledge and opinion of the method of starting them. From my judgment of the condition of the engines while being sent to work on them by the United Iron Works, they were in good condition considering that three or four years had elapsed since I had anything to do with them.

Recross-examination.

Mr. TAUGHER.—Q. Who employed you to help to install those engines when they were first put on the dredger “Richmond No. 1”?

A. The Richmond Machine Company.

Q. Those engines were new at the time, were they not? A. I believe so.

Q. Well, don't you know?

A. I could not swear to the fact of their being new engines, so much of the other stuff on that dredger was second hand.

Q. Do you know whether the engines that you helped to install were new or not?

A. I could not say; I don't know. [463]

Q. How many were employed in installing those engines—how many men were employed in installing those engines on the dredger?

A. There was a number of men working on that dredger in the capacity of carpenters, and boiler-makers and machinists—I could not remember how

(Testimony of James Morrison.)

many were actually engaged in the work; I was one of them.

Q. You were one? A. I was one.

Q. What were you employed as, helper?

A. No. I have stated before that I am a machinist.

Q. What were you employed as on this dredger, at the time? A. As a machinist.

Q. As a machinist? A. As a machinist.

Q. How long were you employed on the dredger at the time of the installing of those engines?

A. Do you want me to state how many minutes I was on the dredger?

Q. How many days?

A. I could not state possibly how many days; my work was between the engines and the shop work.

Q. Can you tell us about how many days?

A. I should say I was on that dredger in days probably about two weeks.

Q. Two weeks? A. Yes.

Q. Not on the installing of those engines?

A. On the engines—if you want to confine it to the engines alone, which I did not understand. I should probably say on the engines three days.

Q. Three days? A. Yes.

Q. How many men were with you on the engines?

A. I was with the other men that were installing the engines.

Q. How many men were there?

A. Three or four.

Q. Three or four?

(Testimony of James Morrison.)

A. Yes. One man from the Samson Iron Works had charge of the work of installing those engines.

Q. What were you working at? Just helping around in the installing? [464]

A. I was a machinist.

Q. What did you do? A. Machinist work.

Q. What was that, in relation to the installing of those engines? Those were new engines.

A. There are always certain amounts of work to be done, as I understand; I believe, at that time, there was some accident to these engines that there had to be some work done on them.

Q. What did you do?

A. I could not remember exactly the work that I did on the engines at this present time.

Q. Do you want to state whether or not there was any machine work done by you at the time these new engines were installed on the dredger "Richmond No. 1"? A. I believe so.

Q. Well, tell us whether or not there was.

A. There was.

Q. What was it? A. Mr. Lawyer—

Q. Mr. Reporter, indicate in the record he was looking at his counsel. A. He is not my counsel.

Mr. LILLICK.—Q. What is it, Mr. Morrison?

A. There were some repairs made on these engines; at that time when these engines were installed there was something broke, and it was repaired, a mean job, and I was engaged on that work, but I can't remember exactly what was broke. Am I forced to try and coax my memory to see if I can

(Testimony of James Morrison.)

remember what broke?

Q. You need only reply to his question so far as you remember it; of course, if you remember what was done, Mr. Morrison, tell what was done.

A. There was something done, I could not tell what it was; whether it was on the clutch or on the valve gear, at the present time I don't remember.

Mr. TAUGHER.—Q. So that broke before the engines were installed?

A. During the time that they were testing out the [465] engines.

Q. Testing out the engines? A. Yes.

Q. Then it was after the installing?

A. That is classified in my mind as installing, until the job is completed. Of course, where you fix the engines up or help to fix them up, that ain't classified in my mind as installing. Installing I take to mean until the job is accepted by the Richmond Machine Company; I say until the end of whatever repairs I was called upon to make.

Q. Well, did the Richmond Machine Company have anything to do with this dredger except to do a little machine work that was to be done around there?

A. Did they have anything to do with the dredger?

Q. Yes.

A. There were a great number of sprocket wheels—

Q. Never mind that. Did the Richmond Machine Company have anything to do except a little machine work that was to be done? A. Yes.

(Testimony of James Morrison.)

Q. What interest did they have in it?

A. They put in the discharge pipe, and they installed the cutting engine, not the cutting engine, but the spud engine, and clutches, and the machinery necessary to drive the pump.

Q. You are sure of that, are you?

A. I am sure of that. Some of the work that I was engaged on.

Q. What machinery drove the pump?

A. The engines.

Q. What do you mean by the engines, the machinery that drove the pump?

A. Of course, the pump was connected directly on to the engine by a belt.

Q. What did you mean when you said the Richmond Machine Company were installing machinery to drive the pump?

A. I am well aware that the Richmond Machine Company was divided [466] into two or three companies. It might be said that it was probably some other improvement company or something of that kind; the firm engaging me was the Richmond Machine Company; whether they were partly engaged in the building of the dredger or whether the dredger was another company, I do not know. If the technicality be used as to whether I worked for it or some other company. I knew who employed me, and I know that I worked on the dredger.

Q. Who paid you?

A. The Richmond Machine Company, \$4 a day.

Q. What particular man paid you, do you know?

(Testimony of James Morrison.)

A. Mr. Timmins paid me my salary while I was there, if I remember.

Q. Are you sure?

A. Well, whether it was Mr. Timmins or some one else I know I got my money all the time I was there.

Q. And while you were working for the Richmond Machine Company they had some little work to do on the dredger and you were one of the men employed to do it; is that it?

A. I was employed; yes.

Q. You are sure it was Mr. Timmins that employed you though, or paid you?

A. I stated the Richmond Machine Company employed me.

Q. Was Mr. Timmons there at the time you were installing or while you claim you helped on the installation of those engines? A. Yes.

Q. Are you sure Mr. Timmins was there?

A. Sure, Mr. Timmons was there.

Q. And was a part of that company?

A. Whether a part of the company or not, I don't know.

Q. Well, he employed or paid the men?

A. He paid me.

Q. You are quite sure of it?

A. Quite sure of that, sure. Now, I come to think of it, he used to bring the money—of course, Timmons was the man we used to kick to if we didn't get enough. [467] That brings it to my mind.

Q. You are just as sure that part of your evidence is correct as any other part is, are you?

(Testimony of James Morrison.)

A. Just as sure—only—excuse me—only on further thought, Mr. Topp was either the manager or superintendent, and the fact that Mr. Topp might have given me a check on several occasions would certainly establish the fact that I got my money from the Richmond Machine Company. I had forgotten about Mr. Topp; Dr. Topp.

Q. Did you ever test the horse-power—do you know how to test an engine to see what horse-power it will develop? A. Yes.

Q. Did you ever test one? A. Yes.

Q. Where?

A. I have tested them on several occasions. I tested one very thoroughly. I have tested on the particular engine referred, built by the United Iron Works—we made 50 tests, scale tests—scale tests on engines.

Q. Were you ever sent out to estimate the cost of repairs to be made upon gas engines by any firm that you have been working with in the last five years?

A. No, not to estimate the cost of repairs, no; it does not come in my line.

Q. Do you know the value of the various parts that might be required in repair work?

A. I know the value of gas engines.

Q. Do you know the value, the cost price of the various parts that might be used in the repair of Samson gas engines?

A. Only on practically estimates—practical estimate.

Q. Do you know the value of Samson gas engines?

(Testimony of James Morrison.)

A. Approximately about the same as any other gas engine; gas engines are established approximately about \$50 a horse-power, varying up to larger sizes in engines where one may take from \$40 to \$50 a horse-power.

Q. \$50 a horse-power?

A. Approximately; that is about the [468] standard figure for figuring the price of gas engines by all first-class makers.

Q. It is from \$50 a horse-power up?

A. I did not say \$50 a horse-power up. I say from \$40 to \$50 up—from \$40 up. There are engines made in the East where they figure as low as \$18 a horse-power, but on the Western Coast, by all makers, reputable makers, \$50 a horse-power is about the estimated average value of first-class gas engines.

Q. Now—

A. I wish I had a good cigar; I would keep this up all day. (Thereupon Mr. Spilman handed the witness a cigar.)

Mr. LILLICK.—The remark of the witness and the remark as to the handing of the witness a cigar was put in the record at the special request of counsel for the libellant.

Mr. TAUGHER.—I do not know where you find any special request just only the statement of the witness, and Mr. Spilman thereupon furnished him with a cigar.

Mr. LILLICK.—Proceed.

A. I do not accept any bribes. There is the cigar back. (Handing.) Put that down in the statement, too.

(Testimony of James Morrison.)

Mr. LILLICK.—(Addressing the witness.) Do not allow this exchange of remarks to affect you in the slightest, Mr. Morrison. This is entirely outside the record, and in a well regulated proceeding would not be entertained at all.

Mr. TAUGHER.—But I notice that you insisted upon every remark going in that you thought might embarrass me a bit. When I was merely jocular in some remarks, you wanted them to go into the record; even when I said they were merely asides between the counsel, you or Mr. Spilman insisted upon them going into the record. But let the record speak for itself. [469]

The WITNESS.—I insist upon having it put in this record that I have never in my life accepted a bribe, and I am not going to be bought for a cigar. I have some rights, as well as any other man. No man is going to insinuate I am going to take that cigar as a bribe. Put that down in the record. I will have this record right. If any lawyer has got a reputation to uphold I have one also. Put it all down.

Mr. TAUGHER.—Q. Anything else you want to say?

A. No, I am finished.

Mr. TAUGHER.—That is all.

[Testimony of J. C. Barker, for Respondents.]

J. C. BARKER, called for the respondents, sworn.

Mr. LILLICK.—Q. What is your age, Mr. Barker? A. 33.

Q. Occupation? A. Well, a machinist, now.

(Testimony of J. C. Barker.)

Q. Have you ever done any work on gas engines?

A. Yes.

Q. Have you ever been an engineer? A. Yes.

Q. How long?

A. Well, I started in—let me see; five years ago, I think.

Q. During that time did you ever run any gas engines? A. Yes.

Q. For how long?

A. Well, I run the Atlas gas engine for the American Dredging Company, and I ran the Atlas gas engine for the Standard American Dredging Company.

Q. Run it for how long?

A. Well, with the Standard American Dredging I started on the Alameda job. When we was about through with it, I run them through the Walnut Grove job, up there at Walnut Grove, and when we got back, why, we took out the Atlas engines and re-installed a couple of Samson gas engines.

Q. For how long did you work for the American Dredging Company? [470]

A. Well, I started—I worked for them four years in one stretch.

Q. From what position did you work up?

A. I worked from oiler up to engineer.

Q. Did you ever work on the Samson engine before you saw them near Alameda on the “Richmond No. 1”?

A. No, sir.

Q. Were they using the Atlas engines on the Alameda job at the time you commenced work there?

A. There was one installed on the upper deck, on

(Testimony of J. C. Barker.)

the main deck.

Q. And you stayed with the dredger when it went to Walnut Grove? A. I stayed with it; yes.

Q. And until the job was finished? A. Yes.

Q. Did they use the Samson engines at all during the time at Walnut Grove? A. They did not.

Q. Did you come down to Oakland with the dredger? A. I did, sir.

Q. Were you on the dredger from the 2d of December until after the Samson engines were reinstalled on the dredger? A. I think so; yes.

Q. Do you know whether there were any men working on the dredger from the 2d day of December to the date when the Samson engines were reinstalled?

A. Why, I think there was—somewhere around four or five.

Q. Do you know in what capacity those men were working, engineers, firemen or what?

A. One of them was a fireman, my fireman, and the others was the extra leverman, which was the carpenter also, and the two levermen.

Q. That does not include yourself?

A. Yes, that includes myself with them.

Q. With them? A. Yes.

Q. What instructions, if any, did you have from the Standard [471] American Dredging Company with reference to the reinstallation of these Samson engines?

Mr. TAUGHER.—I object to that on the ground it is immaterial, irrelevant and incompetent; the in-

(Testimony of J. C. Barker.)

structions that might have been given to him are not pertinent to any issue in the case; what he did might possibly be, but his instructions, I submit, are not.

Mr. LILLICK.—Read the question, please, Mr. Reporter.

(The last question repeated by the Reporter.)

A. Well, the reason that I took charge on that was orders from Mr. Harding, when Captain Knight had crippled himself, as I was engineer at that time, on the pay-roll as engineer, and he crippled himself one morning, or one night, I think it was, and was taken home, and did not get out of bed for nearly two weeks, I think it was, and that was the time that the Samson engines were installed. What date it was I could not say.

Q. What instructions did you have, if any, with regard to the reinstallation?

A. To get them ready as soon as possible, they had to go back to Richmond.

Q. What instructions did you receive, if any, with regard to overhauling or repairing the engines?

A. Why, to get them in good running order.

Q. Now, what did you do after getting those instructions?

A. I went to work and started in taking the cylinder heads off and the cranks, crank brasses and connecting rods.

Q. When you commenced, Mr. Barker, were the Atlas gas engines on board?

A. No; the Atlas engine—we had already taken the Atlas engine off, and taken it over to the wharf.

(Testimony of J. C. Barker.)

But in the meantime, while we was at Walnut Grove we took off the "Wink's" [472] engine, which was taken out in the first place, when we first got up there, after she towed us to Walnut Grove, and coupled up the two engines together so as to get more power for the pump, and when we finished the job we reinstalled the "Wink's" engines back in the boat again, and she then returned and pulled us back and landed us up at East Oakland. But while we was coming down we was getting this other engine ready to take out and put on the Atlas and return it back to the Atlas people, which I understood it was.

Q. After the Samson engines were brought aboard from Richmond what did you do with them with reference to installing them?

A. That we brought over from Richmond, you mean?

Q. Yes.

A. We loaded them on the dredge and set them in position, and then went to work and started to overhaul them.

Q. How many men did you have with you when you were reinstalling them?

A. I think there was five of them, if I am not mistaken.

Q. Do you remember the details with reference to what you did to the Samson engines in overhauling them?

A. Well, we first started, that is when I got the two men from this other iron works, I don't know what iron works it was, I think it was the Oakland

(Testimony of J. C. Barker.)

iron works, I set them to taking off the valve chambers and putting in new gaskets and grinding the valves, and I was working on the other engine.

Q. Do you know what condition the valves were left in after they had been gone over?

A. They were left in first-class condition.

Q. What was done with reference to the carburetors?

A. Well, there was two new carburetors gotten, and they were put in first-class working order.

Q. What did you do with reference to the bearings on the crank-shaft? [473]

A. I looked them all over; took up on all of them.

Q. What condition were the cylinders in?

A. The cylinders were in good condition.

Q. Did you examine them? A. I did, sir.

Q. During the course of your overhauling were the cylinder heads taken off? A. They were, sir.

Q. What, if anything, was done with reference to the gaskets on the cylinder heads?

A. The gaskets on the cylinder heads were thin asbestos gauze, and they were red leaded besides with good, heavy red lead.

Q. Had you any occasion to look at the cylinder walls to see how thick the walls of the cylinders were? A. I did, and they were in fine shape.

Q. In your opinion could those cylinders have been rebored, had it been necessary?

A. I did not catch that.

Q. Read the question, Mr. Reporter.

(The last question read by the Reporter.)

(Testimony of J. C. Barker.)

A. They did not need it. It was not necessary to rebores them. They were in good enough shape.

Q. What was the condition of the spark-plugs?

A. The spark-plugs needed a little cleaning and needed a little more insulation. I took out the old insulation, and put new insulation on the spark-plugs; also put new gaskets around them.

Q. During the work did you take the caps off the bearings of the crank-shafts? A. I did.

Q. What was the condition of the crank-shaft?

A. The crank-shaft was in first-class condition.

Q. What was done with reference to the brasses on the connecting rods?

A. The brasses on the connecting rods was all good; all [474] they needed was a little taking up, and that was all, and we took them up.

Q. Did you examine the crank pins?

A. Yes, sir.

Q. What was their conditions?

A. They were in good condition.

Q. What was the condition of the pistons and the cylinders with reference to rust?

A. Well, those that was on the three cylinder engines—there is none of them only but in one certain piston—that is when up on the third; so when we took off the heads I went to work and I got a little fine emery cloth and emeried them up good on the inside after I took the pistons out of them, and seen that there was nothing wrong with them, and I put back the pistons in them.

Q. Did you look over the fly-wheels?

(Testimony of J. C. Barker.)

A. I did, sir.

Q. In what condition were they?

A. They were in good condition.

Q. Any cracks in them?

A. No. If there was I would not have stayed on the dredger.

Q. Do you know whether there were any cracks in the hubs of the fly-wheels? A. No, there was not.

Q. What was the condition of the exhaust pipe?

A. The exhaust pipe was in pretty good condition.

Q. Did you do anything in the way of overhauling it?

A. Yes; I put on a couple of new pieces of pipe and rethreaded some of the pipe.

Q. Did you do anything with reference to the old threads?

A. Yes; I ran the dies over them and cleaned them up, in case any got a little dented.

Q. Do you know whether you got any new pieces of pipe?

A. Yes, there was two new pieces of pipe gotten.

Q. What, if anything, did you do with reference to the lever on the clutch? [475]

A. I put in a new lever, sir.

Q. Did you go over the circulating pipe?

A. Yes.

Q. Did you do anything in the way of overhauling it? A. Yes; put all new, good pipe in.

Q. After overhauling the engines were they started? A. Yes, I started them.

Q. How did they work?

(Testimony of J. C. Barker.)

A. I ran them for about five minutes or six or eight minutes, maybe 10 minutes, as long as I dare run them without getting too hot without circulating water in them.

Q. How did they work?

A. They worked and shot in all six cylinders.

Q. Speaking from your experience as an engineer, were the engines in a satisfactory condition to run?

A. They were, sir; yes.

Q. During the time that you were trying them there did you ever connect them up with the pump to see whether they would work the pump?

A. Not in Oakland; I did after we got to Richmond, on the way over I hooked up the belt.

Q. Did you stay with the dredger until it was left over in Richmond? A. Yes.

Q. Did you try the engines again over there?

A. Yes; and they still run; and I would have run them still longer if I had circulating water in them.

Q. In your opinion, Mr. Barker, would a cut or scoring of $1/32$ d of an inch in depth on a crank-shaft injure the engine any?

A. No, sir, it would not; not providing it had a little crease on the outside, a sharp crease, a little bur—that is what I was trying to say, a little bur, on the outside would not hurt if it was an eighth of an inch deep. [476]

Cross-examination.

Mr. TAUGHER.—Q. You would not say those engines were just as good when you got through as they had been when they were new?

(Testimony of J. C. Barker.)

A. I would not—what?

Q. You would not say those engines were just as good as when you got through with them as they were when new, would you?

A. No, certainly not; they were in good shape, good running order.

Q. They were in good running order? A. Yes.

Q. Well, you did not have any circulating water on them, did you? A. I did not, sir.

Q. Could you tell without circulating water whether the cylinders were good or not—were tight or not?

A. Yes, when I had a look at them before starting them.

Q. Could you tell whether they were tight or not?

A. I could tell as far as the gaskets was concerned was tight on the cylinder heads.

Q. You could not tell whether the cylinders would leak, could you?

A. Not without circulating water, no.

Q. How could you tell the engines were in good shape when you did not have circulating water on them to test them? A. How could I tell?

Q. Yes.

A. Because you can always tell whether they are in good condition when you are running them; that is, providing you don't hear them leaking like fury.

Q. Could the engines run without circulating water?

A. They could for so long, until they got hot.

Q. How long did you run without circulating

(Testimony of J. C. Barker.)

water? A. I did not want to get them stuck.

Q. Have you any idea how long you run them without circulating water? [477]

Q. What would be the effect of running them without circulating water for say half an hour?

A. Well, it would not have any engines; the powder and dust, the carbon in there, that freezes up; you could not run them; they would freeze up.

Q. Now, you say you started on this dredger as an oiler?

A. I did, for the American Dredging Company.

Q. How long ago?

A. Well, that has been about 8 or 9 years ago.

Q. You started as an oiler? A. Yes.

Q. How long did you stay as an oiler?

A. I stayed as an oiler, I think it was two years and nine months, if I am not mistaken.

Q. Then, what did you do?

A. Then, I went from there to extra engineer.

Q. To extra engineer? A. Yes, sir.

Q. Gas engine or steam engine?

A. Steam engine.

Q. When did you first begin to work with the gas engine?

A. Well, I started in off and on different times working for the American Dredging Company, when they had a launch running—

Q. When did you first work on a dredger with a gas engine as motive power,—with gas engines to furnish the motive power?

A. With the American Dredging Company, the

(Testimony of J. C. Barker.)

dredger "Yankee."

Q. The dredger "Yankee"? A. Yes.

Q. Was it run by gas engine or steam?

A. It is run all by gas engine.

Q. How long did you work on it?

A. I worked on it about 5 months.

Q. What position did you have?

A. I was one of the oilers.

Q. One of the oilers? A. Yes.

Q. How long ago was that?

A. That has been about—pretty near two years ago.

Q. Two years ago? A. Yes. [478]

Q. Prior to going on the dredger "Richmond No. 1" did you ever work on or around a gas engine on a dredger? A. I did, sir.

Q. Where, except on the "Yankee"?

A. Oh, except the "Yankee" and this one, this here dredge "Richmond"—them two is the only ones besides the launch that I worked on at that time.

Q. You were oiler on the "Yankee"?

A. I was oiler on the "Yankee."

Q. What position did you have on the "Richmond No. 1"? A. I was extra engineer there.

Q. What?

A. I was first engineer—second engineer.

Q. That is you took the night shift?

A. I had the night shift when I first started in.

Q. You took the night shift? A. Yes.

Q. Then, prior to that time had you ever installed a gas engine?

(Testimony of J. C. Barker.)

A. I had never helped to install any before then, no.

Q. You had charge of the job of installing the Samson gas engines when you brought the "Richmond" from Walnut Grove?

A. Yes. I had pretty nearly a year and a half's experience with gas engines at that time.

Q. Where did you get your year and a half's experience?

A. Why, with the gas engines on the "Yankee" and this.

Q. You were only oiler on the "Yankee"?

A. I know, but you know the oilers have got to do repairing as well as anybody else when you break down anything.

Q. On the "Yankee" did they trust their repairing to the oilers?

A. Well, the engineers are over them; they have got to help them out.

Q. They help the engineers? A. Yes.

Q. Well, you never ran a gas engine or operated a gas engine until you came on board the dredger "Richmond No. 1"? [479]

A. Yes. I operated my own gas engine.

Q. Your own gas engine? A. Yes, my own.

Q. How big a gas engine did you have?

A. I have a seven horse-power. I have got a seven horse-power and I had a three horse-power.

Q. You had a three horse-power? A. Exactly.

Q. What did you use that gas engine for?

A. A launch.

(Testimony of J. C. Barker.)

Q. That is the extent of your experience of operating a gas engine until you came on board the "Richmond No. 1"?

A. No, not before I was on the "Yankee," before I went on her.

Q. I am talking about operating an engine. You said you were an oiler on the "Yankee."

A. I was an oiler on the "Yankee."

Q. Were you ever engineer or in charge of the gas engines on a dredger until you went on the "Richmond No. 1"?

A. Not fully in charge, except my own.

Q. Except your own three horse-power.

A. Except I had superior officers over me.

Q. You came on the "Richmond No. 1," at the end of the Alameda job?

A. Just about the end of it, yes.

Q. Then, you went on running the engines on the night shift on the Walnut Grove job?

A. Two weeks days and two weeks nights.

Q. When did you start running the engine?

A. I started running on one Atlas engine we had there on the rear end of the Alameda job.

Q. How long were you on the Alameda job?

A. I don't know just exactly how long it was; but as soon as we got through there we went to Walnut Grove.

Q. Was it a week or two weeks?

A. Might have been a week and might have been two weeks.

Q. Two weeks on the Alameda job?

(Testimony of J. C. Barker.)

A. That I would not say, how long we was right there; I am not sure. [480]

Q. How many weeks were you at the Walnut Grove job?

A. I was there, I think it was, around five months; something like that.

Q. That would be 22 weeks, we will say—21 weeks.

A. Well, I was there all the time until we finished the job up.

Q. Then did you operate those engines one shift the whole of the Walnut Grove job?

A. I certainly did; two weeks nights and two weeks days.

Q. On the Walnut Grove job? A. Yes.

Q. You had been operating those engines about 21 weeks? A. Yes.

Q. And two weeks on one Atlas gas engine at the end of the Alameda job? A. Yes.

Q. That is the extent of your experience with operating gas engines, is it?

A. Yes; then from that time on, of course—from the time I left there I have been working for the American Dredging Company as extra engineer again since then.

Q. I am not asking for that. I am asking of your experience up to the time of working on these two dredgers. I do not care what you have done since that time.

A. Yes. I was with the Standard American Dredging Company.

Q. Now, you brought that dredger back on the

(Testimony of J. C. Barker.)

2d day of December, did you not—you finished the Walnut Grove job on the 2d of December?

A. Maybe I did, yes.

Q. Then, the dredge was brought back to San Francisco Bay, was it? A. Yes.

Q. How long did you stay on the dredger?

A. I was on the dredger all the time until this engine was installed and sent over to Richmond.

Q. I see. Then what did you do?

A. Then I got laid off.

Q. You got laid off? A. Yes.

Q. Have you worked for the Standard American Dredging Company [481] since then?

A. No, sir—only about—I beg your pardon there. Harding telephoned me after leaving, about three days afterwards, and wanted me to go over there and see if I could get them running, and I did, sir.

Q. Did you do it? A. I did, yes.

Q. Had you any circulating water on them?

A. No, I did not.

Q. Connected with the cutter?

A. Yes, she was connected with the cutter.

Q. And the pump? A. Yes.

Q. They had no circulating water on them?

A. No, I did not have any circulating water on them because—

Q. (Intg.) How long did you—

Mr. LILLICK.—Wait a minute; let him finish his answer.

A. (Contg.) On account there was no steam in the boiler and the boiler operates the pump for the

(Testimony of J. C. Barker.)

circulating water.

Mr. TAUGHER.—Q. Now, how long did you operate those engines connected to the pump and cutter without any circulating water in them?

A. Just a few minutes, that was all.

Q. About how many minutes?

A. About four, I believe.

Q. About four minutes?

A. Yes. That was all I dared run them with a pressure on them.

Q. How much did you pump?

A. I did not pump because I could not prime the pump, did not have any stuff to prime it with.

Q. You did not prime the pump?

A. No, certainly not.

Q. Who was present when you operated that engine that time?

A. There was the leverman, and a fellow named Gus Weeback, who has been working for the company a good many years.

Q. You did have those engines operate the cutter, did you?

A. Well, the belt on to the pump was fastened to the engine, and as they came together they must go over. Then that morning Mr. [482] Harding came there he wanted me to start and I started it.

Q. Yes. Attached did the engine operate the cutter?

A. No—let me see now. Yes, she turned right over.

Q. She turned right over?

(Testimony of J. C. Barker.)

A. She turned the cutter over and the pump at the same time, and just as soon as I found out she was turning that over all right, then I shut them down. I didn't want to get it too hot.

Q. How often did you say they turned over?

A. That I could not say because I was too busy there getting my engines, getting the mixture right on them.

Q. Did she turn over twice?

A. Certainly she did.

Q. How often did she turn it over?

A. How often did she turn it over?

Q. Yes.

A. Once or twice, I should judge. I don't know.

Q. Once or twice? A. Yes.

Q. Then you quit?

A. Yes. I had to quit because I didn't want the engines to get too hot.

Q. Did you paint the engines?

A. I certainly did, yes.

Q. You painted them? A. Yes.

Q. What color did you paint them?

A. I painted them green.

Q. Green?

A. Yes, sir. Well, excuse me, I did not paint them; my helper painted them.

Q. Now, how many fly-wheels did you say there were on those engines?

A. There is two fly-wheels.

Q. Those are in good condition?

A. Those are in good condition.

(Testimony of J. C. Barker.)

Q. No cracks in the fly-wheel or the hubs?

A. No, sir.

Q. Any bands on the fly-wheels or the hubs?

A. There is only one, and that was put on there for to give the apple dynamo more speed. [483]

Q. The band was put on the fly-wheel to give the dynamo more speed?

A. The one that was put on the hub. There is only one put on there.

Q. A band?

A. Yes. That was put on to give the apple dynamo more speed.

Q. Were you on the dredger when that band was put on the fly-wheel? A. I was not, no.

Q. Then how do you know what it was put on for?

A. I was told what it was put on for, and I could see where the dynamo was put on, from where the dynamo was setting there.

Q. You were told that was the reason it was put on? A. Yes.

Q. You say there was no cracks in the wheel?

A. No, there was no crack on the wheel.

Q. What was that apple dynamo?

A. Why, it is a magneto, an apple dynamo, for the spark.

Q. Is it on there now?

A. Yes, certainly it is on there now.

Q. You are quite sure of that?

A. Yes, I am sure of that because I put it there myself.

Q. Did you ever assemble a gas engine?

(Testimony of J. C. Barker.)

A. What do you mean by that, I do not understand you.

Q. I supposed if you knew anything about a gas engine you would know about assembling a gas engine, what that means.

A. No. I don't know as I do. If you will tell me in another word maybe I will understand. I have not got much of an education.

Q. Did you ever take a gas engine apart?

A. I have, sir.

Q. And put it together again?

A. Yes, I have.

Q. You are talking of this three horse-power?

A. No, I am not talking about my own engine.

Q. You are not talking about your own engine at all? A. No. [484]

Q. Then what engine did you take apart?

A. I have taken apart the "Pirate's" engines for the American Dredging Company.

Q. Gas engine?

A. Yes, gas engine, 150 horse-power; and also the "Dixie's."

Q. Under the superintendence of the engineers?

A. Yes.

Q. They told you what bolts to unscrew, what nuts to unscrew?

A. They did not have to tell me, I know it.

Q. You knew what to do without being told?

A. I know what to do when I come to take out the crank-shaft or piston, I know what to do; I don't have to look far to see how to get the piston out. I

(Testimony of J. C. Barker.)

know I have a lot of bolts to take out and take the brasses off and get the connecting rods loose and everything like that, so that I can get the piston loose.

Q. You would not attempt to do that without the foreman told you what particular things to do?

A. If he told me to take the pistons out I would know what to do, and I would go to work and do it.

Q. And you would know he would not mean the cylinder when he said piston?

A. Yes, I would know that.

(An adjournment was here taken until Friday, October 27th, 1911, at 3 P. M.) [485]

Friday, October 27th, 1911.

[Testimony of W. A. H. Connor, for Claimants.]

W. A. H. CONNOR, called for the claimants, sworn.

Mr. LILLICK.—Q. What is your name, age, and residence?

A. W. A. H. Connor. I am 48 years old. I am living at the present time in Galveston, Texas.

Q. What is your present occupation?

A. I am superintendent of dredgers.

Q. How long have you been in the dredging business? A. I think it is about nine years.

Q. What position did you occupy with the Standard American Dredging Company on the 26th day of February, 1910?

A. I was secretary and treasurer.

Q. Mr. Connor, I hand you a document dated the 26th day of February, 1910, marked Exhibit "A," in the libel on the file in this case, and ask you whether

(Testimony of W. A. H. Connor.)

or not you are the Mr. Connor who signed that document for the Standard American Dredging Company as secretary. (Handing.)

A. I am the one that signed this paper, yes.

Q. Will you read the subdivisions of that agreement marked 9 and 10 and state what, if anything, was said by you to Mr. Cummins or Mr. Cutting or Mr. Wernse about those particular paragraphs of the agreement at the time the agreement was signed?

A. The only thing I can remember particularly was the objection to the date on which in No. 10 the lease of the "Richmond No. 1," would expire.

Q. Had you previous to the execution of that agreement had any negotiations with the Richmond Dredging Company leading up to it?

A. Yes, we had several.

Q. During those negotiations were drafts drafted of the agreement? [486] A. Two or three.

Q. Will you state in a general way, Mr. Connor, the substance of the conversations, as you remember them, that you had with Mr. Wernse or Mr. Cutting in regard to the agreement, particularly with reference to the subdivisions 9 and 10?

A. Just read that question to me again. (The last question repeated by the Reporter.) I can't remember any particular conversation or objections or anything else with the exception that they wanted to put in a final date on which our right to lease the "Richmond No. 1" would expire.

Q. Mr. Connor, I hand you another document which is marked "Claimants' Exhibit 3," and ask

(Testimony of W. A. H. Connor.)

you whether or not that is one of the proposed drafts of the agreement before it was finally executed, about which you had a conversation or conversations with Mr. Wernse or Mr. Cutting?

A. Yes, this is the one I think—I won't be positive, but I think it is just prior to the completion of the one that we signed.

Q. I call your attention to the first three pages of the document which is "Cummins' Exhibit 3" and the first three pages of the "Cummins' Exhibit 4," and the various typographical reduplications.

A. Yes, this was apparently the duplicate of this one.

Q. I ask you whether or not by seeing it and refreshing your recollection you can state whether or not the document, "Cummins' Exhibit 3" was the final proposed draft of the agreement as ultimately executed, and the one gone over by you and Mr. Cummins and the officers of the Richmond Dredging Company just before executing the final agreement?

A. Yes, it is; the first three pages are reduplicates. [487]

Q. Read paragraphs 9 and 10 of the proposed draft, marked "Cummins' Exhibit 3" and state why and when the change, if any, was made in paragraph 10 as it appears upon the final and executed agreement.

A. This agreement was brought down to our office by Mr. Wernse as being ready for signature, and we did not sign it right at that particular time, and Mr. Wernse had made the statement that they were not

(Testimony of W. A. H. Connor.)

in the dredging business, not proposing to do any outside contracts and in looking this over, in this section 10, I called Mr. Cummins' attention to a part that did not seem to me was just right, and after threshing it out amongst ourselves there we changed that section and took that page out and had a new page written in with the change as it appears in this other one.

Q. Do you remember whether or not when the proposed draft, "Cummins' Exhibit No. 3," was presented at your office by Mr. Wernse it had been agreed to by the Richmond Dredging Company or it had been represented to you that it had been agreed to by the Richmond Dredging Company as being an agreement which they were willing to sign?

A. I understood it that way, yes, that there had been no objections to it on their part.

Q. What was done, if anything, with reference to writing over or typing over the page 4 upon which paragraphs 9 and 10 appear?

A. My remembrance is that these were done over in our office on our machine, right there.

Q. And at whose suggestion was that done?

A. Mr. Cummins took it out of the office, and, as I remember, gave it to the stenographer.

Q. Why was that change made?

A. Why, on account of paragraph 10 we, in having talked it over between ourselves, Mr. Cummins and [488] I came to the conclusion we did not like the construction of paragraph 10.

Q. What was your understanding at the time the

(Testimony of W. A. H. Connor.)

agreement was finally entered into and executed with reference to paragraphs 9 and 10 in the agreement?

A. Well, paragraph 9 in the agreement was supposed to cover the use of the dredger "Richmond" for the work that we had in view. Paragraph 10 was supposed to give us first call on the "Richmond" after we got through in the other place; on the supposition that we might have turned the dredge back to the Richmond Dredging Company, paragraph 10 would give us first chance to rent it at \$800 per month, if we wanted it.

Q. Will you read over paragraph 9 and state what your understanding of that paragraph was at the time you entered into the agreement?

A. Do you mean paragraph 9 of the signed one?

Q. Yes.

A. My understanding of that paragraph was that we leased them the dredge "Oakland" for a certain period of time; we had the right to recall that dredge, to have it delivered back to us, on 15 days' notice, and that we had the right to the dredge "Richmond" for such time as we wanted to use it, and if we did not return the dredge "Richmond" to the Richmond Dredging Company at the time we took the "Oakland" away from them, why we would incur a penalty of \$50 a day for each day we continued to hold the dredge "Richmond," until such time as we had gotten through with the dredge "Richmond," and turned it back to the Richmond Dredging Company.

Q. Read paragraph 10 of the agreement as finally executed and state what your understanding of para-

(Testimony of W. A. H. Connor.)

graph 10 was at the time you entered into it.

A. That was simply an understanding that was [489] one of the last things talked over in the negotiations whereby after we had gotten through with all the other parts of the work, that would give us a right over anybody else to rent the "Richmond No. 1" from the Richmond Dredging Company at \$800 per month when they did not want it on their own ground, as they had stated that they did not want to use the dredge only on their own works.

Q. Who stated that they only wanted to use it on their own works? That they wanted to use the dredge on their own works?

A. Mr. Wernse stated that.

Q. What was said, if anything, at the time the document was executed, with reference to the language in subdivision 10 "and that the said first party shall have the right to lease and use said dredger 'Richmond No. 1' at any and all periods when not in use or required by the party of the second part until January 1, 1911"?

A. The only objection—that January 1, 1911, was not originally in, and they wanted some set date. That is the only objection they had to it; they wanted some date on which our option to rent this dredge would expire, and that January 1, 1911, was written in there, and it was initialed by Mr. Wernse and myself.

Q. Was anything said with reference to the wording just previous to the written in portion "January 1, 1911," as to the meaning of "when not in use or re-

(Testimony of W. A. H. Connor.)

quired by the party of the second part”?

A. Why, it was understood that when they were not using it on their own works, that was the understanding between Mr. Wernse and myself—they wanted the dredger for their own business there.

Q. At the time the agreement was entered into, was anything said between you and the officers of the Richmond Dredging Company with reference to the Atchison, Topeka & Santa Fe work, and that it was to be done by the Richmond Dredging Company?
[490]

A. I was distinctly told that it was not to be done by the Richmond Dredging Company.

Q. By whom? A. By Mr. Cutting.

Q. When?

A. I can't remember the date. We were standing on the railroad track, on the Santa Fe tracks at Point Richmond, and they were building a little levee out around there at the time, and I asked what that levee was for, and he told me that it was for the purpose of keeping any material out of the Santa Fe ground; that he proposed to force them to fill, and by keeping any material or anything else out he would make a mudhole of it, and then we would have a chance to do something, the work.

Q. Did he state who he meant by “we”?

A. Well, he said that “then you will have a chance to do something.”

Q. Did you know previous to the execution of this agreement of February 26, 1910, that the Richmond Dredging Company were figuring on doing the At-

(Testimony of W. A. H. Connor.)

chison, Topeka & Santa Fe work?

A. No, sir. We had been assured absolutely they were not figuring on it.

Q. Do you know how long the dredger "Oakland" was in the possession of the Richmond Dredging Company?

A. Without looking up the records I could not tell absolutely. I believe in the neighborhood of five months.

Q. Speaking from your knowledge of the dredger "Oakland," how much material could have been pumped by her in that time of the character of the material at Richmond?

A. Well, that depends; they had said that they only wanted to pump soft material, and all soft material she would, I suppose she would, do anywhere from 220,000 to 235,000 yards a month over the pipeline which they said they wanted to use. [491]

Q. What was said, if anything, by them about pumping soft mud previous to the execution of the agreement?

A. That was the understanding, that they were to pump, or were going to pump just the soft material, because it was a pretty long pipe-line, and we had told them, told Mr. Wernse, in that conversation with Mr. Wernse, that they could not expect to pump that clay over the distance that he wanted to pump it and make the required number of yards, and they said they were going to pump simply soft material.

Q. Did you make any soundings of the material there?

(Testimony of W. A. H. Connor.)

A. Not at that time. I made soundings of that material over a year before, when we contemplated and did make a bid to the Santa Fe to fill up the Santa Fe work.

Q. Do you recollect whether or not it was before February 26, 1910, that you had the conversation with Mr. Cutting over on the levee?

A. No, I cannot. The only thing that I can remember absolutely, definitely, was that they had some men constructing that levee excluding the Santa Fe's property from the other property; and on my understanding and having been assured that they did not intend to go into the contract business, and I inquired why that levee was being built, particularly, around the Santa Fe property, and Mr. Cutting gave me the answer that he did.

Q. Was that before or after the charter-party was entered into, do you know?

A. No, I could not remember, because I think I only saw Mr. Cutting a couple of times, and I don't remember whether that was before or after. I know we rode back on the electric car to Oakland that same morning.

Q. Do you know whether or not any representations were made to [492] you by either Mr. Wernse or Mr. Cutting with reference to the necessity of their having a dredge at Richmond?

A. Yes, there were.

Q. What were they?

A. They made the representation that they had some contract; they did not specify exactly what,

(Testimony of W. A. H. Connor.)

with the city for filling up certain streets, and also they had sold property which required certain filling to be done, and that unless they had a dredge there on the ground working or getting ready to work or about they were going to get into trouble; they had to have one right away.

Q. Do you recollect whether anything was said about time other than they had to have one right away?

A. Well, we wanted to know how long they would want a dredge for, how much they would want to pump, and it was agreed that it was sixty days, that it would be long enough time to do the work they wanted to do, pump the material they said they wanted to pump.

Q. Were you in San Francisco during the time the dredger "Richmond No. 1" was working at Eureka?

A. Probably—I think a great deal of the time; of course I am in and out of the city for a few days at a time very often.

Q. Do you know whether or not any motors were installed on the dredger "Richmond No. 1" at Eureka? A. Yes.

Q. While the work was being done there?

A. Yes, there were.

Q. Do you remember any conversation between you and Mr. Cutting at his office with reference to those motors?

A. At one time, yes.

Q. Who was present at the conversation?

(Testimony of W. A. H. Connor.)

Mr. TAUGHER.—Q. At whose office was that?

A. Mr. Cutting's office. I think Mr. Perry. [493]

Mr. LILLICK.—Q. And who else?

A. Well, I can't remember whether Mr. Wernse was present in the room, or in the other room. It is so long ago; it did not impress itself upon my mind.

Q. What was said at that conversation?

A. Why, Mr. Cutting asked Mr. Perry as to the power he was using there, and was told that we had put on—I think it was, 200 horse-power motor on the pump and 50 horse-power on the cutter; he wanted to know how it was working and Mr. Perry told him very satisfactorily, and Mr. Cutting made the remark that when we got through he might like to get those motors, saying he had an electric line right there at Richmond, and that the gas engines, while they were good for the minimum line, pipe-line, were not strong enough to pump through a longer pipe-line, and they had some long pipe-line to do, that they wanted to do at Richmond, and for that reason might want to get those motors, if they worked satisfactorily.

Q. By saying that, Mr. Cutting said that he might want to get those motors, was anything said about purchasing the motors?

A. Nothing said about purchasing the motors; just simply implied.

Q. Do you remember whether or not Mr. Cutting used the words "get those motors"?

A. I think they are just the exact words he used.

Mr. TAUGHER.—I object to the question on the

(Testimony of W. A. H. Connor.)

ground it is leading and suggestive. This witness does not seem to need prompting; I request that counsel not put his question in such a suggestive way.

Mr. LILLICK.—Q. Mr. Connor, do you know whether or not the Samson gas engines which were upon the dredger when the Standard American Dredging Company took it over under the agreement were removed by the Standard American Dredging Company? A. They were. [494]

Q. At the time they were removed do you remember having had a conversation with any officer of the Richmond Dredging Company with reference to their removal? A. I do.

Q. With what officer of the company and when and where, if you remember, was that conversation, and what was it?

A. The conversation was over the telephone with Mr. Wernse. We had taken the gas engines out of the dredger, getting ready to install the other engines, and the gas engines that we took out were lying on our donkey scow and taking up a great deal of room, that we wanted to use badly, and I called Mr. Wernse up one morning on the telephone; it was from Oakland, I can't remember whether it was the Elks' Club or some place else, but I came from the works in my automobile and stopped up town and called up Mr. Wernse on the telephone and asked Mr. Wernse's permission to put those over on his dock and warehouse at Pt. Richmond.

Q. Do you remember whether or not Mr. Wernse

(Testimony of W. A. H. Connor.)

answered the telephone in person? A. He did.

Q. Do you know Mr. Wernse's voice?

A. I was pretty positive it was Mr. Wernse.

Q. What was said then by you and by Mr. Wernse?

A. He said that I could put them there. I then asked him about a watchman, and he said that they were keeping a watchman at present, but the place was locked and they would be all right. My reason for wanting to do that was when we got through we were to return the dredge "Richmond" over there, and it would have been an easy place for use to put those engines back into place on the dredge, when we got her ready to return. [495]

Q. Did you say anything in this conversation to Mr. Wernse respecting that?

A. That same thing was told to Mr. Wernse, as to why I wanted to put them over there, as to why I thought it would be a good place.

Q. Do you remember positively stating to Mr. Wernse whether or not the Standard American Dredging Company desired only to install other engines temporarily?

A. I told him—I did not say anything about installing other engines temporarily, but I told him I wanted to reinstall those engines in the "Richmond No. 1," before we returned her to the Richmond Dredging Company, and it would be right where we had to return the dredge, and the engines would be right there ready to put in.

Q. Was there any objection to that made by Mr. Wernse? A. No, sir.

(Testimony of W. A. H. Connor.)

Q. What did he say, if anything?

A. Just said, "All right; go ahead," he said, "We won't be responsible for them."

Q. Mr. Connor, I hand you the agreement dated February 26, 1910, and ask you what was the understanding with reference to the provisions of paragraph 9 with reference to increased rental, if there was any such understanding, that the Standard American Dredging Company would have to pay for the "Richmond No. 1," if they demanded the return of the "Oakland" and were still using the "Richmond No. 1"?

A. I don't remember that there was anything, much of anything said about it?

Q. What was the understanding with reference to it?

Mr. TAUGHER.—I object to that on the ground that what the witness thinks might be understood—he said there was nothing said about it.

A. The understanding was that if we kept the "Richmond No. 1" [496] after we demanded and got the return of the "Oakland," that we would be subject then to the penalty of \$50 a day rental instead of \$800 a month.

Mr. LILLICK.—Q. And you don't remember whether that was discussed at all with Mr. Wernse or Mr. Cutting? A. I do not.

Cross-examination.

Mr. TAUGHER.—Q. When did you arrive in San Francisco last, Mr. Connor?

A. I got in about 11 o'clock night before last.

(Testimony of W. A. H. Connor.)

Q. How long are you going to remain in town?

A. For a few days; probably till Monday night.

Q. Just came to testify in this case?

A. Nothing else; yes.

Q. All the way from Galveston? A. Yes.

Q. Were you in San Francisco, Mr. Connor, at the time the charter-party of the 18th of October, 1909, of the dredge "Richmond No. 1" was entered into? A. Let me look at it.

Q. That is the Eureka job?

A. Why, I was probably in town; I could not tell you absolutely. I had nothing to do with the making of the charter-party, I never saw it until after it was drawn.

Q. Well then after this charter-party was made you know the Standard American Dredging Company took the "Richmond No. 1" to Eureka?

A. I do.

Q. And put it to work there on the contract that you had in Eureka? A. I do.

Q. Now, this charter-party was to expire, according to its terms, on the 20th day of January, 1910, was it not?

A. If it says so there, I presume it is correct. Of my own knowledge I do not know. I did not read it entirely.

Q. Just look at it for the purpose and see.

A. (After examination.) Yes, it says, to January 20, 1910. That is initialed by [497] Mr. Perry and Wernse, so that must be correct.

Q. When that charter-party expired, had you

(Testimony of W. A. H. Connor.)

finished the Eureka job?

A. I do not think so. I could not tell you absolutely of my personal knowledge, without looking up the records.

Q. Did not the Richmond Dredging Company notify the Standard American Dredging Company in December, 1909, that they would require the return of the "Richmond No. 1," on the expiration of that charter-party as they had use for the "Richmond" at Richmond?

A. I don't know. I don't remember it.

Q. And did they not again notify you in January that they wanted the return of the dredge "Richmond" to do their work at Richmond?

A. Not of my own knowledge.

Q. And did not Mr. Perry or the officers of the Standard American Dredging Company endeavor to persuade the Richmond Dredging Company to leave them have the "Richmond" at Eureka until you finished the job at Eureka?

A. Mr. Perry might have done so; it is very probable that he did, but of my own personal knowledge I do not know.

Q. Well, you knew that they did not want to return the "Richmond" until after they finished the Eureka job, didn't you? A. I did.

Q. And in order to prevent the Richmond Dredging Company from insisting upon the return of the "Richmond" until after the completion of the Eureka job, that you were very willing to make inducements to the Richmond Dredging Company to

(Testimony of W. A. H. Connor.)

permit you to keep the dredger "Richmond" on the job at Eureka until you had finished it?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and for the further reason that Mr. Connor has stated that he knows nothing [498] about the situation with reference to the agreement of October 18, 1909.

Mr. TAUGHER.—Q. Well, you were in San Francisco on October 18, 1909, and January 20th, 1910, were you not, Mr. Connor?

A. Off and on. I was out a great deal of the time. I was running around to Napa, Petaluma, to Suisun, to Sacramento, to Stockton, to Redlands. I would be out three or four days at a time and a couple of days here and there, and I did not pretend to keep any run of the business at that time.

Q. You were in touch with it all, were you not?

A. No. I do not suppose I would hear one-eighth of it. I was looking after my own particular end, which has absolutely nothing to do with this and I do not remember what talk *there* or what arrangement they had.

Q. Read the question to him again, Mr. Reporter.
(The last question repeated by the Reporter.)

A. Of my own knowledge, I do not know a thing about it, only just scraps of conversation that I had in the office.

Q. Well, did you have anything to do with the making of any charter-parties for the "Richmond"?

A. Just hold on; give me that back. The only charter-party that I had anything to do with was

(Testimony of W. A. H. Connor.)

the one here, just the two here marked as exhibits right here.

Q. How long were the negotiations going on for this charter-party?

A. They had been going on for some little time off and on, I believe, between Mr. Perry—I don't know.

Q. Well, did you have anything to do with it or was it all in Mr. Perry's hands?

A. It would have been in Mr. Perry's hands up to the time he left and went away somewhere—I don't know where he went—then Mr. Cummins came here and Mr. Cummins and I completed them. [499]

Q. Well, who had the negotiating of this charter-party in February 26, 1910, on behalf of the Standard American Dredging Company?

A. Mr. Cummins and myself.

Q. Mr. Cummins and yourself? A. Yes, sir.

Q. When did you start negotiating for this charter-party?

A. I couldn't remember; possibly four or five days on it, I believe.

Q. Not more than that?

A. Not that I remember of, negotiating—that is, getting up the actual drafts of the charter-parties themselves—there had been talk about it, and I had been given to understand by Mr. Cummins that Mr. Perry had had some talk with them with regard to putting a section in, and Mr. Cummins and myself talked it over—Mr. Cummins and Wernse and myself

(Testimony of W. A. H. Connor.)

talked it over in Mr. Cutting's office once, as I remember it.

Q. You had nothing to do with the negotiating of this charter-party of February 26th until four or five days before the signing of that charter-party?

A. That is my memory.

Q. Anything prior to that you had nothing to do with? A. Not that I remember of.

Q. Any negotiations that were had prior to four or five days before the 26th day of February, 1910, you had nothing to do with?

Mr. LILLICK.—Objected to as having already been answered by the witness.

A. Not that I can remember. There is a possibility that I might have spoken about it or have been spoken to about it or written a note about it or received a note about it, but I can't remember.

Mr. TAUGHER.—Q. Your remembrance is you had nothing to do with it more than four or five days prior to the actual signing of the charter-party of February 26, 1910?

A. Yes, four or five days, along in there somewhere. As I say, I can't remember the exact length [500] of time, it is so long ago, and at that time everything was nice and friendly and we paid no attention to that. Whether it was one or two or three weeks or a month, I could not say absolutely; only it was a very short time.

Q. Did you know that the charter-party for the "Richmond" expired on the 20th of January, 1910?

A. I don't remember as to whether I knew about

(Testimony of W. A. H. Connor.)

it particularly or not.

Q. And don't you know that the terms upon which the charter-party of February 26th, 1910, were to be made was agreed upon before the expiration of the charter-party of the "Richmond"? A. I do not.

Q. You had nothing to do with the making of these terms or the making of any terms for the "Oakland" prior to four or five days before the actual signing of it?

A. Not that I remember of, only that we sent the "Oakland" over there a few days ahead of this time into the creek so as to have it there for an advertisement for the Richmond Dredging Company.

Q. Then the dredge "Oakland" was in the creek at Richmond before you took up any negotiations for the charter-party? A. That is my memory of it.

Q. Well, then, the terms had already been settled before you came into it, had they not?

A. In a general way.

Q. You had nothing to do with fixing the terms upon which they were to get either the "Oakland" or the "Richmond"?

A. Only inasmuch as the original itself, original draft was all thrown out, and Mr. Cummins and myself then got these two.

Q. Well, who fixed the rent to be charged for the "Oakland" and for the rent to be charged for the "Richmond" in this charter-party of February 26, 1910? [501]

A. I don't know. But I believe that they had been talked over by Mr. Perry and Mr. Cummins.

(Testimony of W. A. H. Connor.)

Q. Did you have anything to do with the fixing of the rent of either of those dredgers?

A. Not that I know of.

Q. Well, can you tell us whether you did or not?

A. Only as we knew Cummins knew that conversation with somebody else as to what had been understood for it.

Q. Did you have anything to do with fixing of the price? A. No, sir.

Q. You had nothing to do with it? A. No, sir.

Q. That had been fixed before you came into it?

A. That had been fixed—I don't know as to the fixing, but the figures were understood before I had anything to do with it.

Q. Did you suggest any of the terms in that charter-party of February 26, 1910?

A. I suggested a change in No. 10.

Q. Show me that part that you suggested.

A. I suggested changing it so that it reads the way it does in the signed copy.

Q. You suggested its being changed?

A. I did not like the construction of No. 10 in what you call the draft.

Q. I see. Any other change that you suggested from the draft? A. Not that I remember of.

Q. Well, if you had suggested any would you remember them now? A. I think so.

Q. So the only change you suggested in any of the charter-parties was the change in paragraph 10, was it?

A. Yes, that I suggested. Mr. Cummins and I

(Testimony of W. A. H. Connor.)

talked it over between us in the office and made the change.

Q. But the dredger had been delivered in Richmond before you had anything to do with the negotiating of this charter-party of [502] February 26th, 1910?

A. I won't say so, because I don't remember; I couldn't remember the date exactly when it was delivered there. I have not even looked it up, I don't remember. But that is the way I remember it, because—I would say on just an off-hand remembrance that it was over there, that it was over there before the charter-parties were signed—over there lying in the creek.

Q. That is the fact?

A. But I would not be positive; that is the best I can say.

Q. The balance of the charter-parties were fixed before you came into it?

A. Mr. Cummins did most all of it in our office.

Q. Did you have anything to do with the fixing of the—now, just take a look at the charter-party of February 26th, 1910, and see if there was anything that you suggested, that was changed at your suggestion or any way altered because of any suggestion? (Handing.)

A. No, sir, I do not see anything that I suggested changing in that.

Q. The first and second draft had been drafted before you came into the negotiations at all, had they, Mr. Connor?

(Testimony of W. A. H. Connor.)

A. Mr. Cummins prepared the first and second drafts, or had them prepared. I don't know whether he did it.

Q. This draft had been prepared when you came into the negotiations had it? A. This one here?

Q. Yes.

A. That, as I remember, is the first draft that I saw. No, there was another draft; the first draft that I saw was the one preceding this, which Mr. Cutting objected to very strongly, and we had to throw that all to pieces, and did not do anything with it. We had some lands where—we was to take the dredger over and take some land in payment on that work at that time and [503] furnish all the money, etc., and Mr. Cutting did not want it, and then this other one, which is the draft here, was prepared by Mr. Cummins somewhere, or he had it prepared, and in looking it over I did not like the reading of paragraph 10 and it was on my suggestion that—

Q. You mean paragraph 10.

A. Yes—that paragraph was changed.

Q. But had they proceeded or had they not proceeded that far with the negotiations when Mr. Perry went away and you sort of took his place?

A. No; Mr. Cummins took Mr. Perry's place.

Q. I see.

A. And he had a great deal more than I had to do with it, because he is vice-president of the company and naturally when Mr. Perry is away he takes the load and I come in secondly.

(Testimony of W. A. H. Connor.)

Q. Had it gone as far as the second draft before you entered into and took part in the negotiations?

A. No. I was there at that time when they took the first draft up to Mr. Cutting's office; that was not considered at all—

Q. Had you anything to do with the making terms of the charter-party or any of the terms of the charter-party until you first saw this charter-party and suggested the change in that? A. No, sir.

Q. The other terms had all been settled?

A. The other terms was settled by somebody else, Mr. Cutting or Mr. Perry, or some one else.

Q. Well, then, at the time that you had this talk with Mr. Cutting at Richmond the charter-party had been already made, had it not?

A. I would not say as to whether it was or not, because I could not remember.

Q. Well, Mr. Cutting did not start doing work over there until after he made the charter-party of February 26th, did he?

A. I don't remember that. [504]

Q. Well, can't you search your memory?

A. The only thing, if you can tell when he started to build the levee you can locate my conversation because there was a gang of men working on that levee that morning; if you can tell me when they started—there had not been much work done, either.

Q. I will tell you.

A. That is the only way I can locate it. I can't remember dates.

Q. He had signed the contract with the Santa Fe

(Testimony of W. A. H. Connor.)

on January 31, 1910.

A. I don't know when he signed the contract at all.

Q. Well, were you familiar with the situation at Richmond? A. Familiar with what situation?

Q. The *land* of the land and where this dredging was to be done, and the land owned by the Point Richmond Canal and Land Company.

A. In a general way, yes.

Q. Well, were you familiar with the dredging to be done for the Atchison, Topeka and Santa Fe?

A. I was familiar with what the Atchison, Topeka and Santa Fe wanted done because I had made them a bid on doing the same piece of work probably over a year before.

Q. You could not do any dredging work with the Santa Fe without letting the water run over Mr. Cutting's land, over the land of Point Richmond Canal and Land Company, of which he is president?

Mr. LILLICK.—That is objected to as immaterial and irrelevant.

A. There is quite a good sized ditch running alongside of the wagon road that goes back into the canal.

Mr. TAUGHER.—Q. That is on Mr. Cutting's land, is it not?

Mr. LILLICK.—Objected to as immaterial.

Mr. TAUGHER.—Q. That ditch that you speak of? [505] A. I couldn't tell you.

Q. If you had gone over the situation over there carefully, wouldn't you know?

Mr. LILLICK.—I object to that as immaterial and irrelevant and it not being shown whether or not

(Testimony of W. A. H. Connor.)

Mr. Connor knows the property owned by Mr. Cutting.

A. I don't know whether Mr. Cutting owns the land or not. It is right alongside the road, I could not tell whose land it was; it might have been a right of way.

Mr. TAUGHER.—Q. Is it right alongside the Cutting Boulevard?

Mr. LILLICK.—Objected to as argumentative.

Mr. TAUGHER.—Q. Is that what you mean the ditch runs alongside, Cutting Boulevard?

A. I don't know the name of that street; it is that main street that runs down the head of the canal.

Q. You don't know what that is called?

A. I would not swear to it, but I think it is called Cutting Boulevard, I am not familiar enough with the ground.

Q. Well, isn't that ditch actually on Cutting Boulevard? A. I don't know.

Mr. LILLICK.—That is objected to as immaterial and incompetent it not being shown that the witness knows the territory.

Mr. TAUGHER.—Q. If you made estimates to do any dredging work for the Santa Fe, filling work by dredger for the Santa Fe, at Richmond, you would have to know over whose land your water was going to go back into the bay, would you not—you would take that into consideration?

A. You would figure on that, certainly.

Q. Didn't you figure on that when you were figuring on the Santa Fe job? [506]

(Testimony of W. A. H. Connor.)

Mr. LILLICK.—That is objected to as immaterial and irrelevant, and not proper cross-examination.

A. I figured on using that ditch, just as I stated.

Mr. TAUGHER.—Q. Well, did you figure on using that ditch without discovering on whose land the ditch was?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and not proper cross-examination.

A. I did not make any inquiry.

Mr. TAUGHER.—Didn't make any inquiry?

A. No, sir.

Q. Did you ever do any sounding over there?

A. I did.

Q. At Richmond? A. Yes, sir.

Q. For the purpose of doing the Santa Fe filling?

A. Yes, sir.

Q. Did you figure on the number of feet of pipe that it would require from the point of dredging?

A. Why, I must have figured; I can't remember now just what I figured on. I would not figure on the job unless I figured on the amount of pipe, so that it is practically certain that I figured on the amount of pipe necessary, the amount of pipe-line.

Q. And do you remember that that pipe-line was something over 3,000 feet?

A. Well, I knew it would have been over 3,000 feet; I don't remember now how much.

Q. 3,800 feet?

A. I know it would have been over 3,000.

Q. When you were figuring on that Santa Fe job did Mr. Wernse give you maps and all data that he

(Testimony of W. A. H. Connor.)

had for the purpose of showing exactly what number of cubic yards would be required on the Santa Fe job, and how you could do it cheapest?

A. No, sir. He gave me, as I remember—he gave me maps and data as to where we could dig the material on their grounds, to take—

Q. (Intg.) This was on ground belonging to the Point Richmond Canal [507] and Land Company?

A. Yes. It was understood we could have the ground, we could have the material; provided we would take it where they wanted, we could have the material to fill the Santa Fe contract.

Q. At that time did Mr. Wernse furnish you with maps showing the lands of the Point Richmond Canal and Land Company and the Santa Fe Company? A. I don't remember.

Q. You don't remember.

A. No. I am quite sure he never furnished me any maps of the Santa Fe because I had those right from our engineer.

Q. You had those direct from the engineer?

A. Yes.

Q. Well, then from where Mr. Wernse told you you could take the material, did you figure the number of feet of pipe that it would require from the point of dredging to the point of discharge furthest from the dredger?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and on the further ground the witness has already testified to that fact.

(Testimony of W. A. H. Connor.)

A. I stated once that I undoubtedly did.

Mr. TAUGHER.—Q. Do you remember how many feet of pipe the Standard American Dredging Company was to furnish with the dredger “Oakland” at Richmond?

A. My remembrance is approximately 3,500 feet.

Q. 3,500 feet? A. Yes, sir.

Q. Then, in addition to that was the Richmond Dredging Company not authorized to buy such additional pipe as it might require and charge it to the Standard American Dredging Company?

A. They were authorized to buy 1,000 feet.

Q. Only a thousand feet?

A. That was the understanding, yes.

Q. That would make 4,800 feet? A. Yes. [508]

Mr. TAUGHER.—Q. Up near the inner end?

A. Yes.

Q. How near?

Mr. LILLICK.—Same objection.

A. I can't remember now.

Mr. TAUGHER.—Q. Can you remember within a thousand feet?

Mr. LILLICK.—Same objection.

A. No. I was looking for the map to-day. I had the map in the office at one time, but I could not find it. We had the course of the pipe-line marked in red pencil, and I took them off according to the marking of the map.

Mr. TAUGHER.—Q. You knew that the Richmond Dredging Company were in a hurry to have the dredger on the ground at Richmond?

(Testimony of W. A. H. Connor.)

A. Yes, sir.

Q. You are thoroughly satisfied now that you knew that on February, 1910? A. Yes, sir.

Q. They wanted their dredger at that time to commence dredging, and it was very important for them to commence dredging?

Mr. LILLICK.—Objected to as having been answered.

A. Yes, sir.

Mr. TAUGHER.—Q. And you also knew from both the draft charter-party and the charter-party as actually signed that the Richmond Dredging Company had to do 400,000 cubic yards of filling to complete its contracts at Richmond, did you not?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and as not being a proper question with regard to calling for the opinion of the witness as to an understanding that he might have had from the agreements themselves.

A. No, sir. My understanding was that that would be the maximum amount, that they could not tell exactly how much they would [509] want, because they expected to fill some streets without levee work and let the rest slop over, and did not know how much it would take, but that would be the maximum amount.

Mr. TAUGHER.—Q. The charter-party itself sets out at least twice that the Richmond Dredging Company would require 400,000 cubic yards of material, under its contracts, does it not?

Mr. LILLICK.—Objected to as immaterial and

(Testimony of W. A. H. Connor.)

irrelevant and as improper question, and as arguing with the witness.

Mr. TAUGHER.—No arguing, simply asking a question.

A. You have the charter-party, you can tell.

Q. Look at it yourself, Mr. Connor, and see.

A. Not exceeding a total of 400,000 cubic yards of material in one instance, and the other it just mentions the 400,000 yards.

Q. You knew that those provisions were in the charter-party at the time you signed it, did you not?

A. Certainly.

Q. Didn't you know that the contract of the Richmond Dredging Company with the Santa Fe took about 240,000 cubic yards and that the contract with the City of Richmond took about 100,000 cubic yards, and that they were not going to build levees, which would require certain extra material to do the street work and the two jobs would require about 400,000 cubic yards of filling?

Mr. LILLICK.—Objected to as improper question and arguing with the witness.

A. I did not know any such thing. To the contrary, I had been absolutely assured that they did not propose to go into outside dredging and do work for outside people; that they were not in the dredging business. I never had the slightest idea in the world that they were going to do any work with that dredge for the [510] Santa Fe.

Mr. TAUGHER.—Q. You never had any idea that they would?

(Testimony of W. A. H. Connor.)

A. No. I had been absolutely assured that they were not going to, and for that reason I suggested this change in this paragraph 10, for the simple reason that they were not going into outside contracts.

Q. Then, if you suggested that change in paragraph 10 to make it more certain that the Richmond Dredging Company could not do any contract for anybody outside of the Richmond Canal and Land Company, who did you expect they were going to do this work for?

Mr. LILLICK.—Objected to as not a proper question.

Mr. TAUGHER.—Cut out that other question, the first part of the question; I will withdraw that and come back to it.

Q. Who did you expect the Richmond Dredging Company were to do work for?

A. For the city of Richmond, for one thing, filling streets, and that the balance of the material was to cover and go on lots that they had already sold.

Q. Who had already sold?

A. That they were interested in.

Q. Who? A. They; that is all I know.

Q. Who were "They"?

A. Richmond Dredging Company.

Q. Don't you know, Mr. Connor, that the Richmond Dredging Company owned no lands or owns no land at Richmond?

A. At that time I did not know; since I have

(Testimony of W. A. H. Connor.)

learned they did not, but it is under another corporation.

Q. You knew they were going to do some work for the City of Richmond? A. Yes, sir.

Q. Was that not outside work?

A. It was in their own land, in the confines of their own land.

Q. Didn't Mr. Wernse point out to you half a dozen times on the [511] map just how the Santa Fe job would have to be done? A. He did not.

Q. And that nobody could do it but the Richmond Dredging Company or simply with the permission of the Richmond Dredging Company?

A. He did not.

Q. Didn't Mr. Wernse give you all the information that he had, so that you might do the work for the Santa Fe, if you could get the contract?

A. That is the year before.

Q. And that the Richmond Dredging Company, or Mr. Cutting, did not care to do the work for the Santa Fe, as long as the work was done, and for that reason that you put in a bid for it at his suggestion?

A. We might have possibly a year ago, I don't remember now.

Q. Was it Mr. Cutting that suggested that you put in a bid for the Santa Fe work and did not Mr. Wernse supply you with all the information that they had, to do that work?

A. Possibly the year before. I can't remember now, the details.

Q. Don't you—

(Testimony of W. A. H. Connor.)

Mr. LILLICK.—Let the witness finish. We object to counsel interrupting the witness before he has answered the question. Let the witness finish his answer.

Mr. TAUGHER.—I thought he had finished.

(The last question was repeated by the Reporter.)

A. (Contg.) But there was not anything said at the time, at the time of signing these charter-parties. On the contrary, I was informed they were not going to do it.

Q. Didn't you know that Mr. Cutting was anxious that the Santa Fe have certain filling work over there in order that he could complete that work that should be done on his land? A. Yes. [512]

Q. And that he did not want to do the job unless nobody else would do it for the Santa Fe?

A. And he told me that he was not going to do it.

Q. And didn't he tell you that if he had to do the job that he would take the job even at a less cost than it would cost them to have the work done?

A. Not that I remember.

Q. You don't remember that?

A. Not that; no. In fact, well, I know he did not. He did not say he was going to take the job. He said he would not take the job, he would make a mud-hole of it and they would have to make the fill and we could get the work.

Q. You couldn't do the job without his permission.

A. Everything was friendly; there would be no trouble about that, as I understood.

Q. If you knew Mr. Cutting wanted to take the

(Testimony of W. A. H. Connor.)

Santa Fe contract would you have objected to the charter-party of the "Oakland"?

Mr. LILLICK.—Objected to as calling for the conclusion of the witness as to a situation which is purely an assumption.

Mr. TAUGHER.—I won't ask for an answer to the question just at present.

Q. You had to complete your work at Eureka, did you not? A. Yes.

Q. Did you have a dredger to send to Eureka if the dredger "Richmond" had to be returned to the Richmond Dredging Company?

A. We could send the "Oakland."

Q. You could send the "Oakland"? A. Yes.

Q. The "Oakland" could not go upon the ocean at that time in the condition that she was then without doing thousands of dollars worth of repairs?

A. Sure. We took her to San Pedro, and we did not make any repairs—it is not a question of repairs with her; [513] we simply fixed her up just the same as we would have fixed her up to take her to Eureka, but it was the cost of bringing the dredger back and taking another up there, when we had a dredger right on the ground—the expense of bringing her back and taking another up there, that was the question.

Q. But your charter-party of the "Richmond" had expired before you finished the Eureka job, hadn't it? A. Yes.

Q. And you were endeavoring to induce Mr. Cutting to continue your use of it there until you had

(Testimony of W. A. H. Connor.)

completed the Eureka job? A. Mr. Perry.

Q. Mr. Perry had? A. Yes.

Q. Mr. Perry.

A. That is, I heard it was Perry. I don't know whether it was.

Mr. LILLICK.—We ask that the previous answers of the witness with reference to what he has testified to as knowing about the Eureka job be stricken out on the ground it is hearsay.

Mr. TAUGHER.—Q. So you were very anxious to finish that job with the "Richmond"? Did you have a bond up on that job?

A. I don't remember whether we did or not, a private contract.

Q. You don't remember whether there was a bond up or not? A. No. I did not make the contract.

Q. Do you know, as a matter of fact, whether there was a bond to complete that contract in a certain time? A. No.

Mr. LILLICK.—Objected to as immaterial and incompetent.

Mr. TAUGHER.—Q. Mr. Knight says that there was a defeasance which required them to do 2,500 cubic yards of filling a day upon the Eureka job, and that that was the reason they had, in order to hurry the job, that they took off the Samson engines and substituted the motor. Now, don't you know whether there was or not [514] a bond up or a guarantee to complete that job within a certain time?

Mr. LILLICK.—Objected to as immaterial and irrelevant and as arguing with the witness and not

(Testimony of W. A. H. Connor.)

being a proper question.

Mr. TAUGHER.—Q. Don't you know that?

A. Of my own knowledge, no.

Q. Well, of the knowledge that you acquired as an officer of the Standard American Dredging Company, didn't you know that there was a bond up there to complete that job within a certain time?

A. At the present date I do not, and I have not looked at the contract to see.

Q. So when this charter-party was made February 26th, the only dredge that you might have sent there was the "Oakland" if the Richmond Dredging Company had insisted upon the return of its dredger "Richmond No. 1"?

A. Might have been possible to get other dredgers.

Q. Have you any knowledge of or did you know at that time of any place else you could have found a suction dredger to do that work on the Pacific Coast? A. I don't know that we looked for any.

Q. Well, you were very anxious that the Richmond Dredging Company permit you to complete the contract with the "Richmond," were you not?

A. So as not to make an exchange of dredgers.

Q. How much did it cost you to repair the "Oakland" sufficient to permit of her going to ocean from here to San Pedro?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and not having anything to do with any issues in this case?

A. I don't know.

Mr. TAUGHER.—Q. Have you any idea?

(Testimony of W. A. H. Connor.)

Mr. LILLICK.—The same objection.

A. No, sir.

Mr. TAUGHER.—Q. Cost you a number of thousands of dollars, did it not? [515]

Mr. LILLICK.—The same objection.

A. No idea.

Mr. TAUGHER.—Q. You are secretary and treasurer of the company, are you not?

A. Yes. But I do not keep the books.

Q. Now, you say that 60 days was long enough to complete that 400,000 cubic yards of filling at Richmond if they operated the dredge properly.

A. I did not say that.

Q. I thought you said that.

A. I said, had they taken the material that they said they were going to take.

Q. If they had taken the material that they said they were going to take they could complete that in 60 days, could they?

A. That was our estimate, they could do at least 200,000 yards a month.

Q. What is the capacity of the "Oakland"?

A. She has done as high as 1,000 yards in soft material for 72 hours without a shut-down.

Q. 1,000 cubic yards per hour? A. Yes.

Q. For 72 hours? A. Yes.

Q. Now, you know William Kruger, do you not?

A. Yes, sir.

Q. He has worked on the dredger "Oakland" for a good many years, has he not? A. No, sir.

Q. A number of years? A. No, sir.

(Testimony of W. A. H. Connor.)

Q. How long has he been on the "Oakland"?

A. He has been on there for some time, but not a number of years.

Q. How long has he been there?

A. I could not tell you.

Q. Is he on the "Oakland" now?

A. I don't know.

Q. You don't know? A. No, sir.

Q. He was head leverman for a long time on the "Oakland," was he not?

A. He was leverman; as to whether head leverman or not, I don't know that even.

Q. Who told you that the capacity of the "Oakland" was 1,000 yards an hour? [516]

A. I had charge of it while she did the work.

Q. You had charge of it? A. Yes, sir.

Q. Actually aboard the dredger operating her?

A. Actually aboard the dredger superintending her.

Q. Where did you do this 1,000 yards for 72 hours?

A. At Visitacion Bay for the Southern Pacific Railroad.

Q. Visitacion Bay? A. Yes.

Q. How far did you pump that material?

A. Our maximum pipe-line was 3,500 feet, as a rule, and it averaged from 2,000 to 3,500 feet; we had a lift of about, oh, 10 feet.

Q. Have a booster on it? A. No, sir.

Q. No booster? A. No, sir.

Q. And did 1,000 yards per hour for 72 hours?

A. For 72 hours straight, without stopping.

(Testimony of W. A. H. Connor.)

Q. What was the contract price of the material?

Mr. LILLICK.—Objected to as irrelevant and immaterial, and having nothing to do with the issue in this case, and not proper cross-examination and not a proper question.

Mr. SPILMAN.—I further instruct the witness he need not answer.

A. I refuse to answer that question.

Mr. TAUGHER.—I want to know for the purpose of ascertaining the reasonable rental value of the “Oakland.” I have a right to know what the rental value of the “Oakland” is.

Mr. LILLICK.—Ask the witness the question, if you desire, and we will still stand upon our instruction that he refuse to answer.

Mr. TAUGHER.—I can discover something as to the rental value of the “Oakland” if she can do 1,000 cubic yards per hour for 72 hours straight, and we know what the contract price of that was per hour, we can tell something as to her capacity. [517]

A. That was only a spurt. She did not average that all the time. You want to *know her* capacity was? That is the fastest work she ever did, and it was under the most favorable circumstances.

Q. What is the best work the “Richmond No. 1” did during all the time that she was in the possession of the Standard American Dredging Company?

A. My remembrance is that the best work she ever did was done in the early stages of the Lake Merritt job. I believe she did keep up as high as,—oh, possibly as high as 6,000 yards in 24 hours. Now, I

(Testimony of W. A. H. Connor.)

won't be positive. That is to the best of my memory, that is all.

Q. What is the rental value of the "Oakland"?

Mr. LILLICK.—I object to that as immaterial and irrelevant and not proper cross-examination.

Mr. TAUGHER.—Q. What is the rental value of the "Oakland," fair rental value of the "Oakland,"

Mr. Connor? A. You mean for us to run it?

Q. If you were to rent it to somebody.

A. Just rent—of my own knowledge I would not be competent to answer that, because I never had much to do with the making of prices on the rentals, and I do not know up to this time as I had ever seen a dredger leased out with the other fellow to run, so I can't answer that question.

Q. You did say here that the value—

A. Just as I told you before, that value was put on by somebody else; that I had nothing to do with fixing the price, and I have never come up against it, so I don't know; I would not be competent to answer it.

Q. You can't tell us what the rental value of the "Oakland" is? A. No, sir.

Q. Or the rental value of the "Richmond"?

A. No. I would not be [518] competent. I would not consider myself competent at all to answer.

Q. Well, now, you say you had several conversations with Mr. Wernse and Mr. Cutting prior to the making of the charter-party of February 26th, 1910, did you? A. Regarding what?

(Testimony of W. A. H. Connor.)

Q. Regarding the making of that charter-party.

A. Well, I have stated with Mr. Wernse; as to my remembrance, I never had but the one with Mr. Cutting or while Mr. Cutting was present.

Q. When was it that you had the one with Mr. Cutting?

A. Well, at the time that we presented the very first draft. My remembrance is that Mr. Cummins and myself went up there with it to Mr. Cutting's office, and that we had a discussion at Mr. Cutting's office regarding that first charter-party, to which Mr. Cutting objected so strenuously. After that, as I remember it, I do not think I saw Mr. Cutting to talk with him regarding the signing of the getting up of the charter-party; it was all done through Mr. Wernse.

Q. You did not see Mr. Cutting while discussing the terms of the draft charter-party?

A. Not that I remember of.

Q. Did you discuss the terms of the draft charter-party with Mr. Wernse?

A. I can't remember discussing, that I personally had anything to do with the discussing of the charter-parties until such time as Mr. Cummins and I went to Mr. Cutting's office with that first draft.

Q. I am talking now of the second draft?

A. The second draft, why, the second draft, when it came back, my memory is that Mr. Cummins took hold of it and had fixed it up, and I think it was sent up—I would not be sure whether some of the boys of the office went up or whether we called a messen-

(Testimony of W. A. H. Connor.)

ger boy and sent it [519] up to Mr. Cutting's office.

Q. That is the draft you are talking of?

A. That is the draft. And my remembrance is that then Mr. Wernse brought it back to us with practically no suggestions on it, as being agreeable, practically agreeable to them. I can't remember exactly now, but that is my recollection. And then, in the conversation between Mr. Cummins and myself afterwards—

Q. I don't care anything about the conversation you had with Mr. Cummins. A. All right.

Q. Did you have any discussion with Mr. Wernse or Mr. Cutting concerning that draft charter-party?

A. I think I did with Mr. Wernse.

Q. Over the telephone or voice to voice?

A. What?

Q. Over the telephone or when you were talking together?

A. Oh, I can't remember. I don't remember a little thing like that, that would not stick in my mind, something like that.

Q. Do you know whether you discussed it with him at all or not?

A. The only discussion that I really remember, where there was any discussion at all, was that discussion up in Mr. Cutting's office.

Q. That was on the first draft?

A. On the first draft. I do not remember any real discussion about this other than that. We were

(Testimony of W. A. H. Connor.)

so near together that there was practically nothing to discuss.

Q. But you can't say whether you saw or talked to Mr. Cutting or Mr. Wernse concerning this draft or any of the provisions of the draft?

Mr. LILLICK.—Which draft?

Mr. TAUGHER.—Q. That he has here. That is in evidence, known as the second draft. [520]

A. I don't remember whether I had any particular discussion with them about this draft that is in evidence or not.

Q. Don't you remember that Mr. Wernse came back to the office of the Standard American Dredging Company and said that Mr. Cutting said that he was not going to be handed any such thing as that, and if you did not want to make a fair charter-party which provided that he was to have a dredger until he completed the work that he wanted his "Richmond" and would have nothing to do with the "Oakland"?

A. I don't remember that conversation in that many words, or in that language. I remember that Mr. Cutting at the conference in his office objected very strongly to the proposition that we first submitted to him, on account of some lands and various things on account of our wanting to take the dredger and running it ourselves and charge monthly rental. But regarding these two drafts, to the best of my knowledge, I believe there was no such representation made or no such objection made.

Q. Now, in the draft charter-party, paragraph 10,

(Testimony of W. A. H. Connor.)

it says, "If the party of the first part (Standard American Dredging Company) shall permit the party of the second part (The Richmond Dredging Company) to retain the 'Oakland' for long enough to complete 400,000 cubic yards of filling on the lands aforesaid, or if the party of the second part shall fail after notice to that effect to operate said dredger 'Oakland' continuously twenty-four hours each day until 400,000 cubic yards of filling shall have been done, (in which case the party of the first part (Standard American Dredging Company) may terminate this lease and retake possession of the 'Oakland' without being required to return the 'Richmond No. 1' or to pay any extra rental [521] therefor, the party of the first part shall have, and is hereby granted, an option to retain the said 'Richmond No. 1' at the rental of eight hundred dollars a month for such length of time as it may desire to retain the same, but not beyond the first day of January, 1911." A. Yes.

Q. Now, didn't Mr. Cutting first object because he was only to have the dredger "Oakland" for long enough to do the 400,000 cubic yards, whether he had done it or not?

A. That is not my memory of it, sir.

Q. If it broke down or could not be operated for 24 hours a day that you would have to give up possession of the dredger whether he had done 400,000 cubic yards or not—was that not his strong objection to this charter-party?

A. Never heard it before.

(Testimony of W. A. H. Connor.)

Q. Never heard it before? A. No.

Q. But you did that voluntarily just for his benefit without his asking for it, did you?

Mr. LILLICK.—I object to counsel arguing with the witness.

A. No. I just did it for our own benefit.

Mr. TAUGHER.—Q. Will you just take these two charter-parties and point out in paragraph 10 where the Standard American Dredging Company has more rights under paragraph 10 in the charter-party than it had in paragraph 10 of the draft charter-party?

A. This paragraph 10 in the draft charter-party has a provision in here that struck me—that is where I made my kick; it says here, “the party of the first part shall have, and is hereby granted an option to retain the said ‘Richmond No. 1’ at the rental of eight hundred dollars a month for such length of time as it may desire to retain the same.” That is what struck me; if we retained that dredge, whether we was working with it, we could be stuck for \$800 a month. If we returned the dredge that would end this charter-party, [522] and we have no further call on the dredge, whereas putting it in this way, after they have given us their assurance that they were not going into outside dredging, we did not think we needed so much protection, and put it in this way, we only would have to pay them \$800 per month when we used the dredge, and it was not absolutely necessary, if they did not want to use the dredge for their business, to return it; we simply laid it up and only paid \$800 per month when we

(Testimony of W. A. H. Connor.)

wanted to use the dredger.

Q. But not when you retained it?

A. If we was not using it, was not working it, no.

Q. That is, you claim that your idea was that under the draft charter-party you would have to pay \$800 a month for each month you kept the "Richmond" whether you used her or not, whereas under the charter-party as signed that you could keep it without paying \$800 a month if you were not using it?

A. If we were not using it.

Q. Is that your understanding?

A. That is my understanding.

Q. That is the reason you had for changing paragraph 10 as it was in the draft to paragraph 10 as in the charter-party as signed?

A. I so stated.

Q. That was the reason that was changed?

A. That is my reason, and the reason it was put up to Cummins, and the reason for which he and I made the change.

Q. That was the reason that change was made?

Mr. LILLICK.—What was the reason?

Mr. TAUGHER.—That he states.

A. So that we would not have to pay \$800 a month as long as we retained it or return it and cancel the charter-party entirely. [523] After this we could return the dredge at any time we got through using it, if we wanted to, and have the first right to rent it again whenever we wanted to, and during this period of time pay \$800 a month.

Q. If they did not want it or have it in use?

A. Certainly.

(Testimony of W. A. H. Connor.)

Q. Was not the option that you had in the draft charter-party just as effective for that purpose as in the provision in paragraph 10 of the charter-party as signed?

A. Not to my mind, because it said we had to pay \$800 a month for such length of time as we desired to retain it.

Q But that is the reason, that you have given us, why paragraph 10 was changed from the wording of the draft to the wording as it is in the charter-party?

A. Yes, sir.

Q. And there was no other reason prompting you to change that? A. No, sir.

Q. And Mr. Cutting and Mr. Wernse made no objection to paragraph 10 of the draft?

A. No, not that I remember of.

Q. And the change was not made because of any objection on behalf of the Richmond Dredging Company, but because of the reason you have stated?

A. That is just it exactly.

Q. It was not because of any objection made by or on behalf of the Richmond Dredging Company?

A. Not that I remember of; no sir.

Q. You would recollect of it if there had been?

A. I should remember if there had been, yes:

(An adjournment was here taken until Saturday, October 28th, 1911, at 2 P. M. [524])

(Testimony of W. A. H. Connor.)

Saturday, October 28th, 1911.

W. A. H. CONNOR, cross-examination resumed.

Mr. TAUGHER.—Q. Mr. Connor, the charter-party was made on February 26th, 1910, was it not?

A. That is as I remember it. That is the date; yes.

Q. Now, did I understand you to say yesterday that you took no part in the negotiations leading up to the charter-party of February 26th, 1910, until three or four days prior to the making of that charter-party?

A. That is my memory, that I took no particular or active part in it at all until just a little while before the charter-party was made.

Q. Was it explained to you by Mr. Cutting, or Mr. Wernse why they wanted 400,000 cubic yards mentioned in that charter-party, or had that been arranged with some one before you came into the negotiations?

A. My memory is that that had been arranged before I came into the negotiations, but at the same time Mr. Wernse told me too, in one of the conversations that we had, what he wanted to do with it.

Q. Was that prior or subsequent to the making of the charter-party?

A. My remembrance is that it was prior to the signing of it.

Q. Prior to the signing of it?

A. Yes, sir; it was in one of the conversations in our office, but I am not absolutely sure which.

Q. Do I understand you to say that in any conver-

(Testimony of W. A. H. Connor.)

sations that you had with Mr. Wernse concerning the work to be done by the [525] "Oakland that he told you it was to be done on the lands of the Richmond Dredger Company only?

A. My remembrance is that he said "our lands," and in reference to those lands he said all the time "our lands" and "our lots."

Q. Did he assure you at any time prior to the making of this charter-party that the work to be done by the "Oakland" was to be done on their land only?

A. I do not know that he made that a positive assurance, that it was to be done on their land only, but all of the figures, talks and measuring for pipe-line, and ground that was shown us, was on there.

Q. In any of those talks did you ever figure the extent of the pipe-line that would be required on their lands only?

A. Yes, sir, my remembrance is that Mr. Cummins, and myself, and Mr. Wernse, all of us had a map, and we figured there by running a pipe on the street, and scaled it off according to the scale of the map. There was no scale on the map, and we had to inquire of Mr. Wernse the size of the blocks. He knew the number of feet in each block, and we scaled it by counting up the number of blocks, and got at the number of feet of pipe-line.

Q. You are sure none of the fillings of land was to extend beyond their land? A. Absolutely.

Q. It was not to extend to the land of the Atchison, Topeka and Santa Fe?

(Testimony of W. A. H. Connor.)

A. Not on to their ground. It came right next to it, where we understood the filling was to go to.

Q. It was not to go off of their own land?

A. No, sir, not what we understood to be their land.

Q. You are positive as to that.

A. That is my remembrance of it. [526]

Q. Did you not state on your direct direction you were positive of that fact?

A. That it was only to be on the land of the Richmond Dredging Company as we understood it then. I have learned since that the land is under a different description.

Q. You are positive that that was agreed between you and Mr. Wernse.

A. That is my remembrance of our conversation, and my remembrance of all our understanding.

Q. Do you wish to say positively that that was the agreement?

A. It was the understanding. There was no specified business. They did not say, "We are going to fill this little piece of ground, and this." It was just a general understanding that they had to fill streets around in through there, and what did not stay on the streets they would let spill over on their lots to fill up bayous, and that kind of truck.

Q. You are positive that nothing was to be done on any land other than their own land at Richmond?

A. As we understood it then; yes.

Q. You are positive that was the understanding between the parties?

(Testimony of W. A. H. Connor.)

A. I am just as positive as I can be. Of course, anyone is liable to make a mistake, but I don't think so.

Q. You are sure that Wernse did not tell you prior to the time of the making of that charter-party of February 26th, 1910, that they had taken the contract to do the Santa Fe lands?

A. I am absolutely certain of that, because if he had told me that they never would have gotten the dredge.

Q. You are quite positive as to that?

A. Yes, sir.

Q. Did you know that the Richmond Dredging Company was figuring on doing that work for the Santa Fe? A. Not at that time, I did not. [527]

Q. When did you learn that first. Prior or subsequent to that time?

A. The first I knew about it, I went over to see what the dredge was doing, and found it pumping in on the Santa Fe ground.

Q. Did you not know that prior to that time that they were going to do that work for the Santa Fe?

A. No, sir, I never had any intimation.

Q. You never had any intimation? A. No, sir.

Q. And the Standard American Dredging never had an intimation that the Richmond Dredging Company intended to do or to figure on work for the Santa Fe? A. Not to do it with our dredger, no.

Q. To do it without any other dredger?

A. I don't remember positively, but I think that

(Testimony of W. A. H. Connor.)

quite a while before that there was something said about the Richmond Dredging Company doing some work for the Santa Fe if they could, but not at this time. I think I remember hearing something about it, but I am not even positive of that, in my memory.

Q. Was it prior or subsequent to the time that you put in a bid for the Santa Fe work that you discussed with any of the officers of the Richmond Dredging Company the likelihood of their doing the work for the Santa Fe?

A. I could not tell you, but I should imagine probably it was after we put in a bid for the work. It seems to me I remember kind of vaguely of having talked it over with Mr. Cutting, or Mr. Wernse, I cannot remember which, or anything about that now. I think there was some conversation regarding that in which Mr. Cutting made the remark they were very anxious to get that Santa Fe ground filled up for reasons that would benefit his own [528] ground, but when the conversation was I declare I cannot remember.

Q. Did not the Richmond Dredging Company urge you to put in a bid for the Santa Fe work?

A. That might be possible. I will not say that they did not.

Q. Did you not know that the Richmond Dredging Company simply wanted that filling work done on the Santa Fe to complete the general improvement that they contemplated there, and they were quite careless as to who did the work, whether it did the work itself, or whether you did it?

(Testimony of W. A. H. Connor.)

A. I knew they were anxious to get the work done.

Q. And they were willing to afford every facility to you to get the work done, even if you did the work?

A. That is my remembrance at the time we put in the bid, that they were very willing and even offered to give us the dirt.

Q. Then when did the Santa Fe accept your bid?

A. The work was turned down temporarily. As I remember the business—this is so far back, and I have had so many things in my head since that that business is rather hazy—my remembrance is that the bid was sent to the chief engineer at Fresno, and they did not turn down the price, but simply said they were not ready at present to do the work, and the matter was dropped in that respect. I think we wrote two or three other letters to them afterwards, inquiring as to the probabilities when they would want to do that work, and each time was told they were not ready to do it yet.

Q. Subsequent to that time, subsequent to their refusal to accept your offer, were you not informed that the Richmond Dredging Company was negotiating with them for the purpose [529] of doing that filling work? A. No, sir, I was not.

Q. Never was?

A. Not to my knowledge; not that I can remember of now. It may be possible that they did some time in the interval of that year.

Q. I will ask you to look at that letter, and say if that is your signature. (Handing.)

(Testimony of W. A. H. Connor.)

A. That is my signature.

Q. Read the letter, please.

Mr. LILLICK.—Read it aloud, Mr. Connor.

[Libelants' Exhibit Connor 1.]

A. (Reading:)

**“STANDARD AMERICAN DREDGING
COMPANY.**

San Francisco, Cal., May 26th, 1909.

Atchison, Topeka & Santa Fe Ry. Co.,

San Francisco, Cal.

Gentlemen:

Regarding filling of your land at Point Richmond: Fill bounded by main line Santa Fe Railway Co., Ashland Avenue, Richmond Avenue to the east leg of Wye, also filling Ashland Avenue from the east leg of Wye to Richmond Avenue, also for contents of levee to be built along the southerly side of Ashland Avenue and east leg of Wye to Ohio Street to hold material.

We have made very careful soundings of the material available to make this fill and find same to be almost exclusively hard clay; also the pipe-line of minimum length of 2,000 feet and from that to 3,000 feet, will be necessary to convey this material over the ground that you wish filled. After a careful survey of these premises and conditions we feel that we cannot make you a better price for this filling than eighteen cents (18¢) per cubic yard measured in the fill. [530] Had the material available been of a different or softer nature we could possibly have made you a better figure. This figure of

(Testimony of W. A. H. Connor.)

18¢ per cubic yard includes putting up the levees from Richmond Avenue to Ohio Street, and from Ohio Street to the East leg of Wye, but does not include moving any railroad tracks or anything of that nature. It is barely possible that after we get on the ground and see how this thing works out we might be able to give you a figure on filling from the east leg of Wye easterly, to-wit; the 15,500 yards that you are figuring to do with steam shovel—this would be an after consideration.

Trusting that this meets with your approval and may be satisfactory, and hoping to hear from you at your earliest convenience, we remain.

Very respectfully yours,

STANDARD AMERICAN DREDGING
COMPANY.

W. A. H. C. By W. A. H. CONNOR."

Q. What is the date of that letter?

A. May 26th, 1909.

Mr. TAUGHER.—Q. Anything else written on that letter? A. It is marked "duplicate."

Mr. TAUGHER.—I will offer this letter in evidence and ask to have it marked Libelants' Exhibit Connor 1.

(The letter is marked "Libelants' Exhibit Connor 1.")

Q. Do you remember sending that letter to Mr. Cutting after he told you that he was negotiating with the Santa Fe to do that same work on which you had put in that bid? A. No, sir, I do not. [531]

Q. How do you suppose that letter came into Mr.

(Testimony of W. A. H. Connor.)

Cutting's possession with "duplicate" on it?

A. Probably at the time I sent this letter to the engineer I sent them a duplicate. I had a hazy memory of a conversation in which they said they were anxious to get that work done, and I mailed them a copy.

Q. Was not this letter sent to them in the early part of 1910?

A. It is absolutely impossible for me to say when that letter was sent to them. I cannot tell. It may be possible even that I did not send the duplicate copy of it.

Q. This is your signature?

A. Yes, sir. The only reason I say, if it has got my signature on it, I signed it at the same time I signed the other letter, is the typewriter very often, where I *want send* carbon copies of a letter, makes two carbon copies. She will bring me two carbon copies, and will sign them both at the same time. If it was sent afterwards it would not have my signature on it. I am quite positive.

Q. You would say that this was sent to the Richmond Dredging Company—

A. (Interrupting.) At the same time that I sent the copy out to the engineer of the Santa Fe Railroad Company.

Q. After you had learned that the Richmond Dredging Company was negotiating with the Santa Fe to do this very work on which you had put in this bid?

A. I am very positive it was not, and I will tell

(Testimony of W. A. H. Connor.)

you another reason for the same. Our office would not send out the only copy that they had of a letter. That I know they would not do. If they made another copy at a later date to send Mr. Wernse, or to those people, it would have been an original, and that is a [532] carbon copy. That was evidently made at the same time that the original was made which was sent to the Santa Fe; which shows there were two carbon copies made at the same time as the original, and if there were, that was signed at the same time, and sent at the same time.

Q. You are still just as positive now after seeing that letter, as you were before, that at the time of the making of this charter-party, and during the negotiations which led up to the making of this charter-party, of February 26th, 1910, the Richmond Dredging Company had assured you that they were only going to do this work on their lands, that is on the lands of the Richmond Dredging Company, or the lands of the Point Richmond Canal and Land Company?

A. That was our understanding at that time, yes.

Q. You are positive of that?

A. I am as positive as I can be, depending on my memory.

Q. I will ask you to look at this letter addressed to the Richmond Dredging Company dated February 4th, 1910, and see if that is signed "Standard American Dredging Company" by yourself, W. A. H. Connor? (Handing.)

Mr. LILLICK.—Please read it aloud.

(Reading:)

[Libelants' Exhibit Connor 2.]

“We hereby give you an option on the use of the electric dredge ‘Oakland’ to W. A. H. C. ~~be used for filling of the Richmond Canal~~ ~~lands only~~, for a period of thirty days H. W. W. and said period to commence not later than February 19th, 1910, and said use of said dredge to be only for twelve (12) hours per day. The use of said dredge ‘Oakland’ for said twelve hours per day, for use thirty days shall be deemed payment of the charter money [533] for the dredger ‘Richmond’ which we now have under lease from you for a like period of thirty days. The dredge ‘Richmond’ to be operated twenty-four (24) hours per day. Provided at the end of said thirty days the Standard American Dredging Co. has secured no work on which it desires to use the dredger ‘Oakland’ this option to be extended for a second period of thirty days on the same terms. ~~The Richmond Dredging Co. to give us bank bank~~ W. A. H. C. ~~guarantee or bond satisfactory to us,~~ H. W. W. ~~guaranteeing the payment of all operating expenses of the dredge “Oakland” during the said thirty days periods and their proportion of same during such further periods of time as the dredge “Oakland” may be used on such work.~~ Should the Standard American Dredging Co. be able to secure work for which they desire to use the dredger ‘Oakland’ they may at their option, terminate this lease with the Richmond Dredging Company and take charge

of the operation of the dredge 'Oakland' for twenty-four hours per day until the contract requirements of the Richmond Dredging Co. shall have been satisfied in so far as pertains to material to be

filled ~~in solely on their lands~~ W. A. H. C. W. A. H. C. and to a maximum of 400,000 H. W. W. H. W. W. yards, said 400,000 yards to

be computed from the commencement of the work by the dredger 'Oakland'; provided however, that the Richmond Dredging Co. is to pay half of the actual cost of operation of said dredge 'Oakland' during that period of time, in cash on or before the 15th day of the month for the work done during preceding month, and the other half of the actual cost of operation of said dredge 'Oakland' as follows: [534]

At the time of taking charge of the operation of the dredger 'Oakland' the Standard American Dredging Co. shall fix the limit with consent of R. D. Co. as to the length of time it will keep dredge 'Richmond' and it is hereby agreed that from the time said Standard American Dredging Co. takes possession of and operates said dredge 'Oakland' on a basis of two watches per day, that the use of the said dredge 'Oakland,' so operated on the work of the Richmond Canal & Land Co. shall constitute an offset and pay for the use of dredge 'Richmond' for double the time the dredge 'Oakland' is so used and operated.

Should the use of dredge 'Oakland,' as above set forth, not pay rental in full for dredge 'Richmond' for the period of time designated by the Standard

American Dredging Co., then there shall be deducted from the remaining half of said operating expenses of dredge 'Oakland' sufficient money at the rate of Eight Hundred Dollars (\$800) per month, as rental for dredge 'Richmond,' as will pay for use of dredge 'Richmond' in full for period of time the Standard American Dredging Co. designated as desiring to keep said dredger 'Richmond' and the balance of said half of said running expenses of dredge 'Oakland,' in a sum not exceeding Six Thousand Dollars (\$6,000) will be paid to the Standard American Dredging Co. in cash or in a square body of land free and clear of all incumbrances, fronting on the Richmond Canal, at a rate of not to exceed \$1,000 per acre plus actual cost of any improvements that may have been made on said land; the cost of said improvements and the designation of the land to be selected, to be agreed upon between the [535] parties hereto prior to the exercise of this option. Should it so happen that the amount to be deducted as rental for dredge 'Richmond' and the \$6,000 to be taken in land, or in cash, does not equal the remaining half of such running expenses, then the balance thereof is to be paid to the Standard American Dredging Co. by the Richmond Dredging Co. in cash.

The Richmond Dredging Co. hereby agrees to notify the Standard American Dredging Co. of their intention to exercise this option on or before February 12th, 1910, or this option shall be deemed to be null and void and of no effect, and upon the exercise of this option, an agreement along these lines is to be

(Testimony of W. A. H. Connor.)

entered into by the parties hereto.

Time is of the essence of this option.

Very truly yours,

STANDARD AMERICAN DREDGING
COMPANY.

By W. A. H. CONNOR.

W. A. H. C."

Yes, that letter is signed by me.

Mr. TAUGHER.—I offer this letter in evidence and ask to have it marked Libelants' Exhibit Connor 2.

(The letter is marked "Libelants' Exhibit Connor 2.") [536]

Q. You dictated this letter. You caused this letter to be written, did you?

A. I cannot remember whether I did or not. My memory is that that is the first preliminary draft of the first contract that Mr. Cutting objected to.

Q. What do you mean by "the first preliminary draft of the first contract"?

A. That was the first thing that was made regarding this charter.

Q. What do those initials "W. A. H. C." mean?

A. That was dictated by me.

Q. And sent to the Richmond Dredging Company?

A. I don't know whether it was sent or taken.

Q. It was either sent or taken, was it?

A. I think so, yes. I don't know which. I cannot remember.

Q. Do you remember Mr. Wernse coming back to

(Testimony of W. A. H. Connor.)

see you with this option for the "Oakland"?

A. It was all scratched up; yes.

Q. Do you remember why he said that this option as it stood would be of no use to them whatever?

A. I think I do, now, yes. I think at that time he said those lands belonged to the Richmond Canal and Dredging Company—I think that it is right—at that time—and that this contract being made with the Richmond Dredging Company would not cover on these lands.

Q. The lands that you mentioned here were the Point Richmond Canal lands only?

A. I did not know what the title of it was at that time at all.

Q. The Richmond Canal lands would cover any lands owned by the Richmond Dredging Company, or the Point Richmond Canal Company, according to your notion.

Mr. LILLICK.—Objected to as improper question to put to [537] the witness.

A. I don't know whether it would or not.

Mr. TAUGHER.—Q. Mr. Wernse said he was not going to be confined to any land at all, other than any work they had to do at Richmond, is that not a fact?

Mr. LILLICK.—Objected to as an improper question, and assuming that Mr. Wernse has said something of that nature.

Mr. TAUGHER.—Q. Is that not the reason it was changed, and those words "to be used for the filling of the Richmond Canal lands only" were scratched out, and initialed by you?

(Testimony of W. A. H. Connor.)

A. No, sir, my remembrance is that the first reason was that they had a contract with the city for filling streets. That we knew was not Richmond Canal Company's lands, but street lands. It was also stated as I remember that it was other lands, Richmond Canal and Land Company, and something, and this would not be correct. It did not make any difference. This was all they wanted it for, and I made no objection and scratched it out.

Q. If you wanted to confine them to any particular lands instead of scratching out the confining clause that you originally had in there, and substituting whatever you intended to confine them to, if you confined them at all, why did you not substitute some other confining words?

Mr. LILLICK.—Objected to as incompetent, irrelevant and immaterial, and not a proper question.

A. This thing was not drawn anywhere near as carefully as it would have been if it was not simply a preliminary proposition with the intention of having a contract drawn along those lines, if anything came out of it.

Mr. TAUGHER.—Q. Was not the first objection that Mr. Wernse [538] made the objection that they would not be confined to any land except the land at Richmond, whatever they wanted to do there, and for the reason those words were stricken out of the option that you yourself had prepared, and nothing else substituted?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

(Testimony of W. A. H. Connor.)

A. Now, if you will read that whole question I will answer it. (The Reporter reads the question.) I cannot remember whether it was the first objection, or the second objection, or the fourth objection, I cannot remember just exactly what the objection was.

Mr. TAUGHER.—Q. Is there any other change in the option prior to that change? Look at it and see.

A. No, sir, nothing prior to that.

Q. That was the first objection made then to the option, was it—

Mr. LILLICK.—Same objection.

A. It might have been. He might have made an objection to some of these points down further in the letter. It is all objected to all over, and things scratched over, and written in. I don't know which was done first.

Mr. TAUGHER.—Q. You met his objection to that by striking that part out of the option?

A. Striking it out, and when we would make the contract contemplated in that, it would be gone into more carefully.

Q. Were any confining words put in the contract that was actually signed?

Mr. SPILMAN.—Objected to on the ground that the contract itself is the best evidence.

Mr. TAUGHER.—Q. Look at the contract, and see if there were any confining words put in the contract? [539]

A. Now, I will just read the whole contract over.

Q. You started to put confining words in the con-

(Testimony of W. A. H. Connor.)

tract, didn't you?

A. There was still another one before these.

Q. Here is the draft, look at that. (Handing.)

A. There was still another one before this.

Q. Still one before this?

A. No, sir, the one between that and these (pointing).

Q. Where is that? A. I don't know.

Q. Have you a copy of it?

A. Not that I know of. There might be one hanging round the office for all I know. I could not tell you.

Q. You are sure there was another?

A. That is the one drawn starting to close it up on these lines that I believe he contemplated as a lemon.

Q. Was not this draft charter dated the blank day of February, 1910, and marked Exhibit 3 to Cummins' testimony, the one he designated as a lemon?

A. No, sir, the one he designated as a lemon had a whole lot of land business in it, and contemplated our taking the dredger, and running it, and their paying us money and we taking part in land. That was the one.

Q. Is not this letter of yours in the nature of an option dated February 4th, 1910, the first written agreement concerning the hiring of the "Oakland" that was ever made between the parties?

A. I would not say that it was not. It is rather my opinion it was.

Q. Between February 4th and this draft charter-party that is in evidence there was another draft

(Testimony of W. A. H. Connor.)

charter-party prepared, which Mr. Cutting would not accept, and which he called a lemon, that is in which he stated you were intending to hand him a lemon by the charter-party? [540]

A. Yes, sir, I am quite positive there was another draft charter-party drawn up, and submitted, and that is the one that he made all his objections to, and called a lemon.

Q. They made many objections to this one, your option of February 4th, did they not?

A. Yes, sir.

Q. Then you drew up another that was equally as objectionable?

A. I don't remember whether I drew it up, or whether Cummins drew it up from this, or Perry drew it up. All I know is that there was one drawn.

Q. Was that one you speak of ever submitted to the Richmond Dredging Company?

A. Yes, sir; that is the one that I say Mr. Cutting roared so about. He would have nothing to do with it.

Q. Look at this now and see if there are confining words put in the charter-party, or the charter-party actually signed confining the Richmond Dredging Company to do work in Richmond only on their own lands or the city lands, or any other confining clause whatever, except that they were to do work under contract between the party of the second part, and the Richmond Canal Land Company, and others?

Mr. LILLICK.—Objected to on ground that the documents themselves are the best evidence whether

(Testimony of W. A. H. Connor.)

there are confining clauses, and not being a proper question to ask the witness, and arguing with the witness.

A. That is all the confining clause that is put in there, because they simply said they were not going into the dredging and contracting business, and did not want to. All they wanted to do any dredging for was on their own real estate scheme. [541]

Mr. TAUGHER.—Q. When you attempted to confine them that way they objected to it, and in the charter-party drawn no confining clause was actually put in there, and yet you knew all the time that the contemplated work of the Santa Fe had not been completed?

Mr. LILLICK.—The same objection, and arguing with the witness.

A. I knew that the Santa Fe work had not been completed, and had been assured by them they were not going to do it, and the word “others” I took, or we took, to mean the contract with the city for streets, and with individual owners of tracts of land who had bought in there, under which they sold the land as I understood with an agreement that there was to be filling done. That is what we understood by this.

Mr. TAUGHER.—Q. But they would enter into no charter-party where there was any conflicting clause whatever?

A. I suppose that was confining enough. That shows what they were going to do with it.

Q. They would not consent to any confining clause in the charter-party, would they?

(Testimony of W. A. H. Connor.)

A. I don't remember. There is none in there. I don't remember whether that was the particular clause or the land business, whether it was the particular rock on which Mr. Cutting called that a lemon, or the way we had it that we were to take land at a valuation and in square chunk fronting on the canal.

Q. In this option that you offered them, in order to be permitted to keep the dredge "Richmond" at Eureka, you put in some confining words, and they said, "We will not accept it on that ground," and you struck out the confining words? [542]

Mr. LILLICK.—Objected to as arguing with the witness, and the question contemplates more than one question.

A. I have answered the question once.

Mr. TAUGHER.—Read the question to the witness, Mr. Reporter.

Q. Answer it again, Mr. Connor.

A. We struck out the confining words.

Q. And in the charter-party which was subsequently made, confining words were left out, were they not?

Q. You mean the one that was actually signed?

Q. Yes. A. Yes, sir.

Q. The matter had been discussed between you, the confining words in the charter-party, or option, and in the charter-party actually made, the confining words were left out?

A. Yes, sir, on their assurance that they were not going into outside dredging business, and not going into the dredging and contracting business.

(Testimony of W. A. H. Connor.)

Q. Why did you not put in confining words to that effect in the charter-party?

A. I did not think it was necessary. The contract specifies that it was to be done on land of the Richmond Canal and Lumber Company, and others, and as I have heretofore stated "others" was taken to mean the city, the streets, and private lot owners, land owners.

Q. It does not even confine the operations to the land at Richmond, but land at or near Richmond, in the charter-party, does it not?

Mr. LILLICK.—Objected to on the ground that the document speaks for itself.

Mr. SPILMAN.—And further counsel is misquoting the document.

Mr. TAUGHER.—It is here for the witness to look at. [543]

Mr. SPILMAN.—If I am mistaken I will apologize.

Mr. TAUGHER.—I will read the clause, Mr. Spilman, for your elucidation, and you can verify my reading of it "whereas the party of the first part is the owner of the electric dredger 'Oakland,' and the party of the second part is desirous of hiring said dredger to be used for filling on certain lands at and near Richmond, California."

Mr. SPILMAN.—I apologize to you. I was mistaken.

Mr. TAUGHER.—Q. Did that seem like confining them to the parties you mentioned that you had in your mind?

(Testimony of W. A. H. Connor.)

Mr. LILLICK.—The same objection, and further arguing with the witness.

A. It does. All of that land is at or near Richmond. Some of it is nearer than others. Some of it is right at Richmond. Some of it is a mile and a half away.

Mr. TAUGHER.—Q. How soon after they started using that dredger “Oakland” on the Santa Fe lands, did you come over to Richmond?

A. I think it was in the neighborhood possibly of a week. It might have been a day or two sooner, or a day or two later.

Q. The Richmond Dredging Company continued doing work on the Santa Fe lands for several months after that? A. Yes, sir.

Q. Five months and over? A. Yes, sir.

Q. During that five months did you ever protest against their doing work for the Santa Fe?

A. We did not because we knew there was no use in protesting.

Q. You knew you could terminate the right of the Richmond Dredging Company to use the “Oakland” at any time under the terms of that charter-party, did you not? [544]

Mr. LILLICK.—Objected to on the ground that the agreement is the best evidence, and immaterial and irrelevant.

Mr. TAUGHER.—Q. You can look at paragraph 9?

A. I am looking at it right now. It says, “During the term of this agreement, or any extension

(Testimony of W. A. H. Connor.)

thereof the party of the first part"—it says, "if at any time"—

Q. "If at any time during the term of this agreement"—

A. "Or an extension thereof, the party of the first part shall secure work which it desires to do by the use of said dredger 'Oakland,' it may at its option," cancel this lease. That does not state that we can cancel that lease at any time. We could not according to that, as I understand it, cancel that lease unless we had some other work.

Q. You had work which you might have done with the "Oakland" within a month after this time, had you not?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. We had work under contemplation about a month later, but they were longer building this bulkhead than they intended to, and we could not go to work until they got this bulkhead finished.

Mr. TAUGHER.—Q. It was still work you intended to do with the "Oakland" and with that work in view you could have terminated the charter with the Richmond Dredging Company if you wanted to, could you not?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. I am not lawyer enough to say whether I could or not.

Mr. TAUGHER.—Q. Did you have any other work under contemplation at the time to do with the

(Testimony of W. A. H. Connor.)

“Oakland” or any other dredger, at the time that that charter-party was made, or within a month after that? [545]

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. My remembrance is that we had nothing in view with this exception of the “Oakland.” All of our dredgers—I don’t know what work we had to do.

Mr. TAUGHER.—Q. With work around San Francisco Bay to do with the dredgers around here. I am not talking of work you had at Honolulu, Galveston, San Diego, or Los Angeles, or the various other places you were doing dredging work at, but in the harbor of San Francisco Bay, or so close that you would send your dredgers from San Francisco to do the work. Had you any other work in contemplation at the time that this charter-party of February 26th was made, or within a month after?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and not a proper question.

A. I cannot remember.

Mr. TAUGHER.—Q. Search your memory a bit, and see if you can remember after thinking it over?

A. I am afraid not because we have work in contemplation in so many different places. We have a number of dredgers, and as to just the time when we had work in contemplation I cannot remember. It is possible that we did, and it is possible we did not.

Q. If you were negotiating for any work at that time in San Francisco, or around the San Francisco Bay, and Mr. Perry was away, you as Secretary and

(Testimony of W. A. H. Connor.)

Treasurer in his absence would be likely to know it?

A. Mr. Cummins was here, and he was Vice-president of the company and he took more charge of affairs than I did. My particular end [546] of the business was chasing around the country looking after machines, and a little work that had been done, or to be done, I cannot remember whether I was at Stockton. I believe we were doing some work at Stockton, and I cannot remember whether we had that work completed, or was doing it. We had a nice little lemon of our own at that time at Tuolumne, and I was up there some of the time.

Q. The jobs that you did around here that I know of from the evidence that has been introduced in this case subsequent to the making of this charter-party, and prior to January 1st, of this year are the following: There is the job for the Sugar Company, near Berkeley, one; the Eureka job, two; the Alameda job, three; the Walnut Grove job, four. Did you know of any of these jobs at the time that this charter-party was made, or within a month after it?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and not a proper question.

Mr. TAUGHER.—Q. And were you negotiating for the doing of any of those jobs at the time that this charter-party of February 26th was made, or within a month after that?

Mr. LILLICK.—The same objection to the second question tacked on to the first.

A. As near as I can remember, the only one that we were absolutely negotiating within the month

(Testimony of W. A. H. Connor.)

after was the Monarch Oil Company over on the Berkeley shore. It might be possible that Mr. Perry had under contemplation that little piece of work that was afterwards done over at Alameda, because Mr. Perry himself made the deal with that man Emmons.

Mr. LILLICK.—Never mind your reason. Just answer the question. [547]

A. He made the deal with him. I don't think it was until quite a while after this thing was signed up. The Walnut Grove job came up very suddenly, so it was not in contemplation, as I remember, thirty days.

Mr. TAUGHER.—Q. How about the Alameda job?

A. I just spoke about the Alameda job—the Emmons' job.

Q. Yet during all the time that the Richmond Dredging Company was working on the Santa Fe job at Richmond the Standard American Dredging Company made absolutely no protest until the 13th day of April, 1910?

Mr. LILLICK.—Objected to as having already been answered, and we protest at the course of the cross-examination as being improper.

A. I could not say. I made no protest myself, that I remember of. As to what Mr. Cummins, or Mr. Perry may have done, I don't know anything about.

Mr. TAUGHER.—Q. Who served the notice on the Richmond Dredging Company terminating its right to hold the "Oakland"?

(Testimony of W. A. H. Connor.)

A. I think I took that letter up there personally.

Q. Up where?

A. Up to the Richmond Dredging Company's office. That is my remembrance of it.

Q. What conversation took place at that time with Mr. Cutting—between you and Mr. Cutting?

A. I don't remember that there was very much of any.

Q. Tell us what you do remember of it?

Mr. LILLICK.—Objected to as not proper cross-examination.

A. About the only thing I can remember is that I think Mr. Cutting made the remark "we will have to have our dredge back." I [548] think he made that remark. Then, as I remember, he was at his desk, and I said, "I don't know anything about that," and I turned round, and went out, and he turned round, and went to work. I think that was all that was done and said when I delivered the letter.

Mr. TAUGHER.—Q. They were working on the Santa Fe job, and the job for the city of Richmond at the time that you served that notice terminating the right of the Richmond Dredging Company to use, or operate the dredge "Oakland"?

A. They were supposed to be. I don't know whether they were or not.

Q. Was the dredge at work?

A. I don't know whether it was or not. I was not over there.

Q. Did not Mr. Cutting tell you that he could likely finish the job in a month, if you let him have the

(Testimony of W. A. H. Connor.)

“Oakland” a month longer?

Mr. LILLICK.—Objected to as not proper cross-examination.

A. I don't remember that he made any such remark, no. My remembrance of it is they turned the dredge back to us maybe three or four days after we served the notice, when they had the right to keep it for 15 days, and use it if they wanted to.

Mr. TAUGHER.—Q. At the time that you served that notice terminating the lease of the “Oakland” did Mr. Cutting ask you where the dredger “Richmond” was?

Mr. LILLICK.—The same objection.

A. I don't remember.

Mr. TAUGHER.—Q. Do you not remember telling him that the dredger “Richmond” was then at Walnut Grove?

Mr. LILLICK.—The same objection. [549]

A. No, sir, I don't remember.

Mr. TAUGHER.—Q. She was at Walnut Grove at that time, was she not?

A. I don't remember whether she was, without looking up records.

Q. You could not tell that much?

Mr. LILLICK.—The same objection.

A. No, sir.

Mr. TAUGHER.—Q. Do you remember Mr. Cutting asking you if you could get the electric current at Walnut Grove to operate the “Richmond”?

Mr. LILLICK.—The same objection.

A. I don't remember him asking me that question, no.

(Testimony of W. A. H. Connor.)

Mr. TAUGHER.—Q. You do not remember telling him at that time you were not using electric current on the “Richmond” now, but you had two gas engines on there?

A. I don’t remember that, no.

Q. You don’t remember that? A. No, sir.

Q. Nothing was said by you, or by Mr. Cutting at that interview, concerning the power that you were using at that time on the “Richmond”?

Mr. LILLICK.—Objected to as having been already answered by the witness, and we protest at the length of the cross-examination.

Mr. TAUGHER.—I should like to offer a protest against Mr. Lillick’s frivolous and lengthy objections. I am willing to have it understood that every question I ask is objected to by him.

Mr. LILLICK.—I shall only object to the ones I consider improper.

Mr. TAUGHER.—Q. Answer the question.

A. I don’t remember that anything was said. It might possibly be, but I am square in saying [550] that I don’t remember.

Q. Do you remember when the bids for the dredging to be done for the Government at Stockton were opened? A. I remember the time; yes.

Q. Was it not the very day before you served that notice?

A. I could not tell you without looking it up. I cannot remember dates that way. I don’t remember the date I served the notice.

Q. Don’t you remember you served the notice ter-

(Testimony of W. A. H. Connor.)

minating the right of the Richmond Dredging Company to use the "Oakland" the day after the bids for the Government job at Stockton were opened?

Mr. LILLICK.—Objected to as immaterial, irrelevant, and not cross-examination.

A. It might have been, but I don't know.

Mr. TAUGHER.—Q. Were you present when those bids were opened on the Stockton job?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and not having anything to do with the issues in the case.

A. I was.

Mr. TAUGHER.—Q. Did you not then discover that the Richmond Dredging Company was the lowest bidder on that job?

Mr. LILLICK.—The same objection.

A. I did.

Mr. TAUGHER.—Q. Did you not know that the Richmond Dredging Company had put up a certified check for \$2,500 as a guarantee that they would enter into a contract with the Government to do that work in accordance with their bid?

Mr. LILLICK.—The same objection, and on the further grounds there is already evidence in this case that was the fact, that it [551] has not been contemplated, and there can be no purpose served in asking this witness the question.

Mr. TAUGHER.—My impression is that Mr. Perry stated, the details of that Mr. Connor knew, and he did not.

A. I don't know whether they had a certified

(Testimony of W. A. H. Connor.)

check, or a bond. They would undoubtedly have to have one or the other to have a contract considered by the Government.

Q. You knew if you took away the dredger "Oakland," and kept the dredger "Richmond" that the Richmond Dredging Company would be in a very embarrassed position in relation to that job, did you not?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and calling for the conclusion of the witness.

A. They would have to get another dredge to do the work with, that is sure.

Mr. TAUGHER.—Q. Was there any other suction dredger in the vicinity of San Francisco that could do the work?

Mr. LILLICK.—The same objection.

A. I believe they specified a little later, designated a dredge to the Government with which they proposed to do the work.

Mr. TAUGHER.—Q. Was there a dredger that could have been used to do that work in the vicinity of San Francisco?

Mr. LILLICK.—Objected to as immaterial, irrelevant, and not having anything to do with the issues in this case.

A. I don't know. I did not make any inquiries.

Mr. TAUGHER.—Q. Don't you know? Don't you know every dredger that is on this coast?

A. No, sir, the particular dredger that they specified they were going to do the work with, I had

(Testimony of W. A. H. Connor.)

never seen. It was practically [552] a new machine, just being built, or put up.

Q. That is the reason you did not know, because it had not been constructed yet?

Mr. LILLICK.—Objected to as arguing with the witness, not proper cross-examination, and immaterial and irrelevant.

A. I say it had not been finished. It was under construction at that time, or under repair, or something. I don't know. I never had seen the dredge.

Mr. TAUGHER.—Q. Did you not say to Mr. Newhall, one of the bidders on that job, immediately after the bids were opened that the Richmond Dredging Company could not do that job because they had no dredger, and they could not get the "Richmond"?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. I don't know as I know any Mr. Newhall.

Mr. TAUGHER.—Q. He is a partner of Wright on the Pioneer dredge.

A. I don't remember the man at all; I don't remember him at all. I don't know that I have ever seen him.

Q. Do you remember making any such remark to anybody? A. I do not.

Q. Do you know positively you did not make that remark to anybody?

A. I would not swear I did not.

Q. You would not swear you did not?

A. No, sir, because I could not remember.

(Testimony of W. A. H. Connor.)

Q. Did you not say to Mr. Franks that you had Cutting over a barrel, and he could not do the Stockton job? A. Oh, hell, no.

Q. Did you make any such remark?

A. I don't remember that I talked to Mr. Franks at all about it.

Q. Did not Mr. Franks afterwards get the contract?

A. Yes, sir. [553] I believe he did. I believe all those bids were thrown out, and it was re-advertised, and Mr. Franks got it. That is my remembrance of it. They advertised it under different conditions so that they could allow a clam-shell dredge to do it.

Q. You knew the reason that the Standard American Dredging Company took the Lake Merritt job at less than you could afford to do it for, didn't you?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and not an issue in this case and known by counsel on the other side not to be an issue in in this case.

A. I don't know.

Mr. TAUGHER.—Q. You knew you were taking it at a loss at the time you took it?

A. Mr. Perry took that. I had nothing to do with it until it was done. He had all the arrangements made, and everything.

Q. You knew nothing about that?

A. I knew the general course of the negotiations, but had nothing to do with making the price, or making the deal.

(Testimony of W. A. H. Connor.)

Q. You knew at the price that they agreed to take that, they could not make any money out of it?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. I don't even know that yet.

Mr. TAUGHER.—Q. And the reason you took it was for the purpose of keeping other concerns from going into business (dredger)?

Mr. LILLICK.—Objected to as being improper question, known by counsel on the other side to be an improper question, immaterial, irrelevant, and not proper conduct on the part of [554] the opposing counsel.

Mr. TAUGHER.—I do not mind telling you in answer to that, the reason we think, they deliberately took away the "Oakland," and kept the "Richmond" was because we had bid on the Stockton job, and they wanted to put us out of the dredging business, and we would be embarrassed by having a \$2,500 check up there; they had the dredge with which we intended to do it, and they thought we could not take it away from them.

Mr. LILLICK.—We object to counsel's statement, and desire to point the Court's attention to the objection we have already made to the question asked. The statement of counsel shows for itself the improper position he is taking, and the unprofessional method in which he is asking these questions, and making up this record.

Mr. TAUGHER.—I think Mr. Lillick's objections are not usually made in good faith, but are either

(Testimony of W. A. H. Connor.)

made for effect or for the purpose prompting the witness. With my compliments, Mr. Lillick.

A. Mr. Perry took it; I do not know his reasons.
[555]

Mr. TAUGHER.—Q. Did the fact that the Richmond Dredging Company put in a bid for the Stockton job have anything to do with the Standard American Dredging Company terminating the right of the Richmond Dredging Company to use the “Oakland”?

Mr. LILLICK.—We instruct you not to answer.

Mr. TAUGHER.—Q. How soon after taking away the “Oakland” did you commence work for the Monarch Oil Company?

A. I could not remember exactly. I think it was almost immediately, though.

Q. Was it not several weeks after?

A. I don’t think so; it might have been.

Q. Can’t you search your memory a bit and find out?

A. It might have been. We had to make repairs. There were quite a number of repairs we had to make to it. I can’t remember the exact date we took the “Oakland” from them or the exact date on which we went to work for the Monarch Oil Company; I know they were hollering at the time for us to get there.

Q. Well, what is your evidence, you did not commence work for the Monarch Oil Company for several weeks after, or did? A. I don’t remember.

Q. You don’t remember? A. No, I don’t.

(Testimony of W. A. H. Connor.)

Q. Was it not the understanding and agreement of both parties to that charter-party of February 26th, 1910, both in the negotiations leading up to the charter and at the time of the making of the charter-party itself that the Standard American Dredging Company could terminate the right of the Richmond Dredging Company to operate the "Oakland" at any time by returning the "Richmond"?

Mr. LILLICK.—Objected to on the ground that the agreement speaks for itself. [556]

A. In answer to the question I will say that I was not lawyer enough to interpret that contract. My understanding of it was that we would have no right to terminate that unless we had some other work on which we wanted to use the dredger.

Q. Read the question to the witness again.

(The last question repeated by the Reporter.)

A. That was not my understanding. I don't know what the other parties' understanding of the matter was.

Q. What was your understanding of it?

A. What section are you referring to now?

Q. Read the question and his answer again. (The last question and answer repeated by the Reporter.) What was your understanding of the matter?

A. My understanding was we could terminate the contract on the "Oakland" at any time by giving 15 days' notice, that is at any time after securing work for the machine to do, that we wanted to use the machine on, by serving them with 15 days' notice we could terminate it, on those terms.

(Testimony of W. A. H. Connor.)

Q. But you could terminate it at any time by *bring back* the "Richmond"?

A. I do not think it says so, and I do not think that was implied.

Q. But that you would have to bring back the "Richmond" before you could take away the "Oakland" unless the Richmond Dredging Company had completed 400,000 cubic yards of filling?

A. No. My understanding of that was that we could take away the "Oakland" as I say, when we had work for her any time on 15 days' notice, whether we returned the dredge or not.

Q. Whether the Richmond Dredging Company had done the 400,000 cubic yards of filling or not?

A. I believe that is the terms of the contract there.
[557]

Q. Is that your understanding of it?

A. Just whatever that says is my understanding.

Q. Read the contract and see if that is your understanding of what it means.

A. "If at any time during the term of this agreement or any extension thereof, the party of the first part shall secure work which it desires to do by the use of said dredger 'Oakland,' it may, at its option either require the party of the second part, after fifteen days' notice in writing, to operate said dredger 'Oakland' *twenty-four each day* until 400,000 cubic yards of filling (including all filling previously done by the 'Oakland') shall have been completed or to terminate this lease of the said dredger 'Oakland' by giving the party of the second part fifteen days'

(Testimony of W. A. H. Connor.)

notice of such termination, and returning the dredger 'Richmond No. 1' to the party of the second part as in said charter provided, or paying the party of the second part at the rate of fifty dollars a day for said 'Richmond No. 1' for all time it shall be retained by the party of the first part after the expiration of said fifteen days' notice, and the return of the 'Oakland' to the party of the first part." Now, my understanding at that time of that whole business was that we could take that, serve them a notice to work 24 hours and then take the dredger, and if we did not return the dredge "Richmond" that the only difference it made it cancelled the \$800 a month rental, and we had to pay them \$50 a day rental instead of \$800 a month for such time as we would keep the "Richmond No. 1" after we took the dredge "Oakland" away from them.

Q. And that you could take the dredge "Oakland" away from them and not return the "Richmond" whether they had completed their contract there or not?

A. Well, they had plenty of time to complete it; that ain't our fault.

Q. But your understanding is that you could take it away, take the "Oakland" away and not bring back the "Richmond" [558] regardless of whether or not they were only partially through their contracts at Richmond?

A. I don't think I thought anything about it at the time. As I say I am not a lawyer and I can't

(Testimony of W. A. H. Connor.)

interpret those things like a lawyer.

Q. You made it, didn't you?

A. Made the contract?

Q. Yes. A. I don't think so.

Q. Isn't it signed by you?

A. It is signed by me but I did not draw it up.

Q. What was your understanding of it then?
That is what I want to get at.

Mr. LILLICK.—Objected to on the ground the witness has stated his understanding on that in full.

A. I have given my understanding of the whole business there.

Mr. TAUGHER.—Q. Well, but I want to know particularly, is it your understanding that you could take away the "Oakland" before the Richmond Dredging Company had completed its work at Richmond—you could take away the "Oakland" and not bring back the "Richmond"?

Mr. LILLICK.—The same objection.

A. Take it away by serving that 15 days' notice.

Mr. TAUGHER.—Q. Whether or not—

A. (Contg.) Which is provided for in here.

Q. (Contg.) —they had completed the 400,000 cubic yards mentioned in the contract and required by them to be done?

A. All I can say is just the same thing.

Q. That is, your understanding at the time was you could take away the "Oakland" and not bring back the "Richmond" regardless of the fact that the Richmond Dredging Company was only partially through with its work at Richmond?

(Testimony of W. A. H. Connor.)

Mr. LILLICK.—We object to the question and notify the proctor for the libelant that at the proper time we are going to apply to the court for an order taxing the costs of this proceeding upon the libelant.
[559]

A. This contract says that after 15 days' notice in writing to operate said dredge "Oakland" each day until—

Q. I am not asking you to read that. I am asking for your understanding.

A. I am reading it to get at the understanding. I have got to read it over. The only understanding you can get of that thing is that in the fifteen days working at 24 hours each they would be supposed to complete 400,000 cubic yards of filling, that is all, the only construction that can be obtained from this.

Q. In what time? A. In the 15 days.

Q. That is, in 15 days they were to have the whole work done, were they?

A. That was ample time if they had pumped the material they said they were going to pump, to pump 400,000 cubic yards.

Q. You mean that would be ample time for it if the "Oakland" would do what you represented she would do?

Mr. LILLICK.—Objected to as calling for the conclusion of the witness, immaterial and irrelevant.

A. She would do what we represented she would do in that class of material.

Mr. TAUGHER.—Q. But your foreman on the job said that the best she could do in that material

(Testimony of W. A. H. Connor.)

was 250 cubic yards per hour.

Mr. LILLICK.—Objected to upon the ground it is not a proper question, and assuming something not in evidence.

Mr. TAUGHER.—Q. Would you say it was a correct statement?

Mr. LILLICK.—We object to the reframing of the question.

A. That material that he was talking about was not the material that was contemplated to be pumped; that was clay that they dug; [560] they were supposed to dig the softer stuff on our representation.

Q. In this letter written by you to the Atchison, Topeka and Santa Fe Railroad on May 26th, did you not state as follows: "We have made careful soundings of the material available to make this fill and find same to be almost exclusively hard clay."

A. Yes, that is correct, absolutely.

Q. The dredger was to take it from the same place as you intended to take it from when you made this offer to the Santa Fe, was it not?

Mr. LILLICK.—Objected to as immaterial and irrelevant, arguing with the witness, and on the further ground that the witness has testified that the material as they understood it to be taken for the filling required by the Richmond Dredging Company was to be soft material and the proctor for the libellant is reading from a letter contemplating the filling of the Santa Fe roadbed.

Mr. TAUGHER.—I again want to object to Mr.

(Testimony of W. A. H. Connor.)

Lillick's prompting his witness under the guise of an objection to my question.

A. I don't know what Mr. Lillick said even, I was not listening to him. Now, if you will ask me that question again?

(The last question was repeated by the Reporter.)

In the same general locality, but overlying this clay is, down to 8 feet, the softer material before you hit on hard clay; some places possibly more than 8 feet, some places it is possibly a little less; but when I made my figures for the Santa Fe Railroad Company my experience in dredging was such that I knew better than to try to make a fill for the railroad company out of that soft material; it was no good for a railroad fill, and in order to get any material such as would accommodate or be satisfactory to the railroad company you would naturally have to have a hard material. [561]

Q. Would that soft material have been good to make streets out of?

A. Some of it would pile up; the harder stuff would pile up right along the line of the streets and the softer stuff would all go off.

Q. What would be the difference in making streets and a fill for a railroad?

A. Because a street would drain it and a fill for the railroad is held in; the water is held in that mud solution. It is like it was at Visitacion Bay.

Q. Where levees were used would not soft material be better than clay?

Mr. LILLICK.—Objected to as irrelevant and im-

(Testimony of W. A. H. Connor.)

material and not forming a part of any issue in this case.

A. Not for a railroad fill where you want to run railroad tracks on it.

Mr. TAUGHER.—Q. When it has once dried out and covered over with proper covering it is just as good for underlying filling as any other, isn't it?

Mr. LILLICK.—Same objection; also the further objection that it is arguing with the witness.

A. I could not tell you.

Mr. TAUGHER.—Didn't you state in the letter it was because you could not get other material easier to handle that you would have to charge 18 cents a cubic yard?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and not forming any part of the issues in this case.

A. Yes. Yes, it was easier to handle; it was suitable for the work; that was the intention.

Mr. TAUGHER.—Q. That is, you did not want the Santa Fe to get any material except what you considered the very best for their purpose? [562]

Mr. LILLICK.—The same objection.

A. I had been through the Visitation Bay business out here with the Southern Pacific and got stuck with a lot of that mud, and I knew perfectly well there was no use giving the other railroad company the same proposition.

Mr. TAUGHER.—Q. That is, you wanted to protect the railroad company?

Mr. LILLICK.—The same objection.

(Testimony of W. A. H. Connor.)

A. I wanted to do what was right.

Mr. TAUGHER.—Q. I am glad *you* that was the motive that actuated you in that particular transaction. A. Thank you.

Q. It certainly was far from the motives that actuated you in this, as I understand your motives.

Mr. LILLICK.—We again object to counsel's unprofessional conduct.

Mr. TAUGHER.—Q. Now, you say in the negotiations leading up to that charter-party of February 26th, 1910, that it was not understood and agreed that the Standard American Dredging Company could bring back the "Richmond" at any time they finished with it at Eureka and have the "Oakland" returned to it by the Richmond Dredging Company?

A. I did not do all the negotiating. I don't know as to whether it was understood and agreed, or not.

Q. Well, what other work was in the contemplation of the Standard American Dredging Company and which they intended to do with the "Richmond" at the time of making the charter-party of February 26th, 1910?

Mr. LILLICK.—Objected to as immaterial and irrelevant, and upon the further ground that the witness has already answered the question.

A. I have said that I could not remember that there [563] was any work in contemplation at the time this charter-party was made.

Mr. TAUGHER.—Q. Well, will you say that there was or that there was not?

Mr. LILLICK.—Same objection.

(Testimony of W. A. H. Connor.)

A. I will say that I do not remember.

Mr. TAUGHER.—Q. I will ask you just to look at that signature—I will ask you first, are you familiar with Mr. Perry's signature? A. I am; yes.

Q. You would know it any place you saw it?

A. Surely.

Q. Is that Mr. Perry's signature? (Showing.)

A. That is his signature, yes. R. A. Perry.

Q. Did you ever see that letter? Read it, will you, please?

A. (Reading:)

[Libelants' Connor Exhibit "A."]

"Confirming our verbal understanding: We have to advise that we will furnish our dredge 'Oakland,' now located at Mare Island Navy Yard, to the Richmond Dredging Company; said dredge to be operated at Richmond, California, by you; you to pay and guarantee payment of all bills contracted for the operation of said dredge; we to give you privilege of operating same from 6 A. M. to 6 P. M. daily; you to return the dredge to us in the same condition as you receive it, including all parts, and make repairs or renewals to all parts worn, lost or destroyed during the operation. It shall be agreed by you that the plant shall be returned in the same condition that you receive it. You to have the use of this plant at the same price as we are required to pay under the terms of our contract for charter for dredge 'Richmond.' Whenever dredge 'Richmond' is returned or the contract of charter for said dredge 'Richmond' is concluded [564] then we shall discon-

(Testimony of W. A. H. Connor.)

tinue our charter to you of the dredge 'Oakland.' You to accept or decline this proposition, in writing, by February 1st, 1910, and if you accept same the charter price to commence February 1st, 1910."

I can't remember that I ever saw that particular letter; no.

Mr. SPILMAN.—Q. What is the date of it?

A. It is dated January 27th, 1910.

Mr. TAUGHER.—Q. It is written by Mr. Perry, though? A. It is written by Mr. Perry, yes.

Mr. TAUGHER.—The particular part of this letter that I want in evidence is this phrase, this sentence: "Whenever dredge 'Richmond' is returned or the contract of charter for said dredge 'Richmond' is concluded, then we shall discontinue our charter to you of the dredge 'Oakland.' " And for that particular purpose I want to offer that letter in evidence.

Mr. LILLICK.—We object to that on the ground that any negotiations leading up to the agreements are embodied in the agreements themselves.

Mr. TAUGHER.—I think you examined him very thoroughly on these very negotiations, Mr. Lillick.

Mr. SPILMAN.—The whole letter goes in, as I understand.

Mr. TAUGHER.—I have no objection to it all going in. I only offer it for one particular purpose. If you want the balance in, you have my permission to put it in. There is no objection on my part to its going in. The only reason I want it is for that particular purpose.

(Testimony of W. A. H. Connor.)

(The letter is marked Libelants' Connor Exhibit "A.")

Q. Do you remember getting a letter from the Richmond Dredging [565] Company on February 9, in which it stated that the "Oakland" would be of no use to it unless it was furnished 3,800 feet of shore pipe; that since that phase of the matter had been taken up with Mr. Perry, and he was familiar with it, and since he was absent, and you might not be familiar with that condition, to wire Mr. Perry to get his consent to either furnishing 3,800 feet of shore pipe or permitting the Richmond Dredging Company to buy any pipe that might be needed to make that amount?

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. I don't remember the absolute getting of the letter, but it is very probable that I did. I am not absolutely positive but I do think that I did wire Mr. Perry regarding that very same thing and as I remember it, his answer to me was that he only agreed to furnish what pipe we had; and it runs in my mind now that not having quite enough pipe to do their work, we went to work and borrowed some pipe of the American Dredging Company of some kind and sent it over there to help them kind of piece out to get enough pipe, and then later they had a talk with Mr. Cummins, after that—I guess it was after; after the charter-party had been signed and everything. They had a talk with Mr. Cummins and myself and it was agreed that we would let them buy 1,000 feet

(Testimony of W. A. H. Connor.)

of pipe and charge it to us.

Mr. TAUGHER.—Q. Didn't they tell you they would not take the "Oakland" unless you furnished that much pipe?

Mr. LILLICK.—Same objection.

A. I don't remember that, to be sure, as to whether or not they did, as to whether they made that absolute statement.

Mr. TAUGHER.—Q. Didn't Mr. Cutting tell you that he would not take the "Oakland" unless you furnished at least 3,800 feet of shore pipe? [566]

Mr. LILLICK.—Same objection.

A. I don't remember, I say, that he made the statement that he would not take it. My remembrance was that they would want about 3,500 feet of pipe at the start.

Mr. TAUGHER.—Q. Don't you remember Mr. Wernse told you also that they would not take the "Oakland" unless you provided them with 3,800 feet of shore pipe?

Mr. LILLICK.—Same objection.

A. He might have said so but I don't remember it. I won't say that he did not, because I don't remember.

Mr. TAUGHER.—Q. Now, you say that you notified some one of the officers of the Richmond Dredging Company that you intended to remove the Samson engines from the "Richmond."

A. That I intended to remove them?

Q. Yes. A. No. That I had removed them.

Q. I understood you to say that you notified them

(Testimony of W. A. H. Connor.)

that you intended to remove them.

A. No. I had removed them. I had them on the scow and I wanted to use the scow and I wanted some place to store them and I asked permission to take them over to the warehouse where they would be handy for the reinstallation.

Q. Who did you communicate with?

A. Mr. Wernse.

Q. Mr. Wernse?

A. That is, I took it to be Mr. Wernse over the telephone. I telephoned to him considerably and I am quite positive it was him. Of course, I could not see him from where I was.

Q. Are you sure it was not *the* *that* is sitting at your right that answered your communication?

A. No, I am not sure. I could not say who I was talking to, but I took it to be Mr. Wernse, from his voice and his conversation.

Q. You know that Dave is in Mr. Cutting's office; you have seen him often, haven't you?

A. I don't remember that I have seen [567] him there. I do not pay any attention to boys, office boys, while walking around that way.

Q. How often have you been in his office?

A. I don't remember.

Q. In the last two years, in Mr. Cutting's office?

A. Maybe half a dozen times; I do not suppose probably to exceed that much.

Q. Did you ever go in there when you did not find Dave there?

A. I don't remember of ever seeing him there. I

(Testimony of W. A. H. Connor.)

did not pay any attention to him. If he is there, I probably did, but I don't remember now.

Q. Well, are you sure that you telephoned Mr. Wernse that you had these engines off?

A. I called for Mr. Wernse, and as I remember there was a wait and he came to the telephone, and that was the conversation; I think I have detailed that conversation over.

Q. But you are sure that somebody said "this is Wernse"?

A. Yes, I am quite sure of that, and sure that I recognized his voice.

Q. And you told him that you had taken off those Samson engines?

A. Yes, that I had them out, and I had them on the scow, and I wanted to use the scow, and I wanted permission to put them on their platform there.

Q. Who took the engines to Richmond?

A. Why, I think it was Gus Weebeck went over with them; I won't be positive.

Q. Where did he put them?

A. Of my own personal knowledge I do not know.

Q. Don't you know that those engines were put upon a wharf there at Richmond and that you were afterwards notified by the Point Richmond Canal and Land Company that that dock was not meant to [568] bear any such weight as the weight of those engines, and that the engines were apt to drop in the water, if something was not done with them right away?

(Testimony of W. A. H. Connor.)

A. Of my own personal knowledge I do not know that; no.

Q. And didn't the Standard American Dredging Company instruct somebody over there to move the engines from the place where you had first put them into the warehouse? A. I don't know.

Q. Did you also have the old pump shell on the scow at the time you had the engines?

A. I don't know. A pump, as a rule, wears out a piece at a time. I don't remember whether they had put in a new pump then or put it in before.

Q. What did you do about the old pump shell afterwards?

A. I don't know what they did.

Q. Did you intend to put it back on the dredge after you finished using it? A. No.

Q. Well, you sent it over to Richmond with the engines, didn't you?

A. I don't know; I did not go over. I did not see the stuff that went over. I don't know what they left or anything about it.

Q. When did you finish the Walnut Grove job?

Mr. LILLICK.—Objected to as immaterial and irrelevant and being in evidence at least two or three times already.

A. I don't know; I was not in charge of it.

Mr. TAUGHER.—Q. Were you in San Francisco when the job was finished?

A. I don't even know that, whether I was in San Francisco or Galveston.

Q. Were you in San Francisco on the 2d day of

(Testimony of W. A. H. Connor.)

December, 1910?

A. I presume I was. I did not leave for Galveston until, I believe, it was the 7th of February of this year. Up to that time I was in town most of the time; being in town or in and out. [569]

Q. Mr. Perry testified that the Walnut Grove job was completed on the 2d of December, 1910.

A. Well, that was probably correct, although I could not tell.

Q. Do you know what was done with the dredger "Richmond No. 1" between the 2d day of December, 1910, and the 3d day of February, 1911?

A. No, I do not. I believe they were doing some overhauling.

Q. Do you know where she was during that period?

A. Well, I don't remember whether it was during that period that I saw her or not. I did see her at one time over there by the Atlas Gas Engine works while I think we had the "Oakland," and I think her—I remember, any way, we had the "Oakland" there, I think, we had the other dredger there at the same time; as to whether that is the particular time I don't remember.

Q. Do you remember when the Standard American Dredging Company sent over to get the Samson engines from the warehouse at Richmond in the latter part of January, 1910?

A. The only thing I remember about that, I went over there some time, along in there somewhere, myself to look up the engines and find out where they

(Testimony of W. A. H. Connor.)

were. As to sending after them or when they were sent for or who went and got them, I have no knowledge at all. I don't know even when they were taken.

Q. Between the 2d day of December, 1910, and the latter part of January, 1911, nothing was done towards putting any engines on the "Richmond No. 1" was there, by the Standard American Dredging Company?

A. I don't remember when the engines were put back, nor when they started to put them back, at all.

Q. Did you think you were paying \$50 a day for the dredger during December, 1910, and January, 1911, before you put back the Samson engines?
[570]

Mr. LILLICK.—Objected to as being immaterial, as to what this witness' opinion was regarding that.

A. I believe it was generally understood by our people there that we were subject to a rent of \$50 a day until the dredger was put in shape.

Mr. TAUGHER.—Q. Did you endeavor to keep that "Richmond" in your possession during that time, not using her, in order that the Richmond Dredging Company might not put itself in a position to bid upon the Key Route Basin work?

A. I have absolutely no knowledge as to why the dredger was not returned sooner, because I was having enough to do with what I was on; no knowledge whatever.

Q. But you were in the office during that time, were you not? A. In and out, yes.

(Testimony of W. A. H. Connor.)

Q. When were the bids opened on the Key Route Basin work?

A. I could not tell you without referring to the records, because I don't remember.

Q. Can you tell approximately what date?

A. No. I have got one of the poorest memories, I believe, that there is in the world for dates; that is one thing I have never been able to remember, and I don't suppose I ever will, and that is a date. I do, though, remember the opening of the bids and the time, thoroughly, but not the date.

Q. Who got that Key Route Basin job?

A. Well, there was two of them, as I remember. I don't know which Key Route Basin you are talking about.

Q. The work to be done by the suction dredge.

A. By suction dredge we were low bidders.

Q. Did you get the work?

A. I believe so. I believe the contract has been signed. [571]

Redirect Examination.

Mr. LILLICK.—Q. From your knowledge of that Key Route Basin work, Mr. Connor, and your knowledge of the specifications for the work, was there any possibility of that work being done by the dredger "Richmond No. 1" by reason of its capacity?

A. Why, I don't think it would have been—well, it would not have been possible to do it without a booster, and even then I don't think that the dredge could have done the work on account there is a good

(Testimony of W. A. H. Connor.)

deal of very hard material in there. I don't think she is strong enough a dredge to have done the work; and then there is a whole lot of long pipe-line work.

Q. Do you know what the specifications were with regard to the time within which the work was to be done?

A. Not specially regarding the time, but there was, I believe, some clause in there about a minimum amount of yardage that we had to do, which would make it impossible for the "Richmond" to do it.

Recross-examination.

Mr. TAUGHER.—Q. What is the minimum in that contract?

A. As I remember, I won't be positive, but as I remember, I think it was 200,000 yards a month.

Q. 200,000 cubic yards per month? A. Yes.

Mr. LILLICK.—We offer in evidence the deposition of R. A. Perry, taken on behalf of the libelant.

Mr. TAUGHER.—At this time I would like to reserve my right to offer any objections to the testimony offered by Mr. Perry in my brief, on the suggestion of counsel on the other side that any objections that I may have to the testimony in Mr. Perry's deposition may be pointed out in my brief, to which proposition I accede.

Mr. LILLICK.—That is the case for the claimants. [572]

[**Testimony of H. W. Wernse, for Libelant (Recalled in Rebuttal).**]

H. W. WERNSE, recalled for the libelant, in rebuttal.

Mr. TAUGHER.—Q. Did you ever talk with any of the officers of the Standard American Dredging Company about the Santa Fe job prior to the charter-party of February 26th, 1910? A. I did.

Q. Just tell us what those conversations were; the gist of those conversations, with whom they were had, and about the time.

Mr. LILLICK.—Q. State what you said and what they said, or otherwise we will object.

A. I talked with Mr. Connor with reference to the Santa Fe job, telling him that we were trying to get them to fill the piece of land lying between Ashland Street and the Santa Fe roadbed, because that piece of land and our land are practically the same thing, and that I brought Mr. Connor the specifications which were specially prepared by the Santa Fe officers, and also the map or blue-print, so that they could figure on the work. In those specifications they mentioned the number of yards and where the stuff was to be put, as per the map which they furnished. It also stated in there they were to move the East Shore Suburban tracks, because those specifications were gotten up for us, and I mentioned to Mr. Connor that if they could in their bid include the moving of their tracks, to do it, and Mr. Connor gave a bid to the Santa Fe of 18 cents, I believe, in the letter and specially mentioned they did not believe

(Testimony of H. W. Wernse.)

they could move the tracks for that amount. I told Mr. Connor that we were anxious to get that work done, and that we had given them a figure before but they did not accept it at that time. I also spoke to Mr. Cummins about it, and Mr. Cummins and I went over to Richmond and surveyed at that time a large piece of property lying on [573] the west bank of their canal which we proposed to dredge and fill, make the Santa Fe fill and also the city fill. Mr. Cummins stated that we would have to dredge the softer material if we wanted to do the work and make any money at 15 cents.

Q. On what job?

A. On the Santa Fe job, it having been necessary to pump it a long distance.

Q. What distance would it have to be pumped?

A. Well, the farthest away from this place was about, well, the 3,800 feet—that was the reason we mentioned that amount of pipe.

Q. The Standard American Dredging Company knew at the time that the charter-party of February 26th was entered into that the Richmond Dredging Company had taken a contract to do the Santa Fe work, did they?

Mr. LILLICK.—Objected to as leading, and calling for the conclusion of the witness.

A. Yes, sir.

Mr. TAUGHER.—Q. When did the Richmond Dredging Company conclude the contract with the Santa Fe to do that filling work at Richmond?

A. January 31, 1910.

(Testimony of H. W. Wernse.)

Q. What conversation did you have, if any, with any of the officers of the Standard American Dredging Company concerning the Santa Fe work subsequent to the 31st of January, 1910?

A. May I look at that letter there—

Q. Yes. A. When I received this letter—

Q. What letter? A. Dated February 4, 1910.

Q. Signed by whom?

A. Signed by Mr. Connor—W. A. H. Connor.

Q. Isn't it the Standard American Dredging Company?

A. Yes, by Mr. W. A. H. Connor—I took the letter down to Mr. Connor and specially called his attention to these phrases that were stricken out.
[574]

Q. What are they—the first one?

A. "To be used for the filling of Richmond Canal lands only." And I stated to Mr. Connor that we had succeeded in getting the Santa Fe to sign up a contract for doing that work, and that the Santa Fe's lands and our lands were practically the same thing, because they run together, the boundaries of our land practically, on account of the surface of the land and being marsh land, ended at the Santa Fe's roadway, and that we would not consider anything unless we had the right to do the filling that we had contracted for at Richmond.

Q. Did that include the lands of the Santa Fe?

A. It included the lands of the Santa Fe and the lands of the Richmond Canal Company—the Canal and Land Company.

(Testimony of H. W. Wernse.)

Q. When you made that objection was any alteration made in the option of February 4, 1910?

A. We struck out those words and Mr. Connor and myself initialed it.

Q. Any other words stricken out in that option because of the fact that the Richmond Dredging Company then had a contract with the Atchison Topeka and Santa Fe Company?

A. Yes; further down in the letter the words "in solely on their lands." There was the same objection I made to that, because, I told Mr. Connor that was simply impossible, that we had taken the contract, and Mr. Perry knew it, and they all knew it, and that we considered those lands just the same as ours, that we objected to them considering that an outside contract of any kind; that the Santa Fe and ours were so closely associated on those lands over there that only the people who would study it would know the boundaries of our land because Ashland Street was not defined at that time. Then, further down here we crossed out 500,000 yards and put 400,000, for the reason that I told Mr. Connor at the time [575] that we did not care for any 500,000 yards; 400,000 yards would be enough; the other extra 100,000 we did not care for; so we changed that to 400,000; we reduced it on that account.

Q. Did the Richmond Dredging Company receive that letter, signed by the Standard American Dredging Company, by R. A. Perry (handing)?

A. Yes, sir.

Q. When?

(Testimony of H. W. Wernse.)

A. Well, it is dated January 27th, 1910. I suppose we received it the next day.

Q. I show you a carbon copy of a letter, Mr. Wernse, and ask you if you ever saw that before, and if you did, just tell us when and where.

A. That is a copy of a letter—

Q. Read it, please.

A. That I wrote to the Standard American Dredging Company on February 9, 1910.

Q. Just read the letter.

A. (Reading:)

[Wernse Exhibit "A" in Rebuttal.]

"February 9th, 1910.

Standard American Dredging Company, Merchants
Exchange Build'g, City.

Gentlemen: We will accept your offer to use the dredge 'Oakland' for 12 hours a day in lieu of your using our dredge 'Richmond' 24 hours a day, same to take effect after Feb. 20th, 1910.

As per verbal understanding between Mr. Perry and Mr. Wernse, it was agreed that you furnish us 3800 feet of shore pipe as we will need this amount of pipe for our first week, we trust you will take this matter up by wire with Mr. Perry, in case you are not familiar with the above understanding.

We cannot use the dredge without 3800 feet of shore pipe so kindly take this matter up at once.

Very truly yours."

It was signed "Richmond Dredging Company" by myself as secretary.

Mr. TAUGHER.—I offer that in evidence and ask

(Testimony of H. W. Wernse.)

that it be marked Wernse Exhibit "A" in rebuttal.

(The letter is marked Wernse Exhibit "A" in Rebuttal.) [576]

Q. Did Mr. Connor ever telephone to you to the effect that the Standard American Dredging Company had removed the engines from the "Richmond" and that they wanted to send them over to the warehouse of the Point Richmond Canal and Land Company? A. No, sir.

Q. Or did he ever telephone you to that effect?

A. No, sir, he did not.

Q. Did he ever telephone you that the Standard American Dredging Company had removed the Samson engines from the "Richmond"?

A. No, sir. The only intimation I ever had that the engines were removed from the dredge "Richmond" was when I arrived in the office about 4 o'clock, one day. I can't remember the date, the young man in the office told me that the Standard American Dredging Company had put some gas engines on the wharf at the machine-shop at Richmond, and that the wharf was bearing down under the weight, and that they would be in the channel before many hours, so I wrote a letter to the Standard American Dredging Company, telling them that the engines were there and we would not be responsible for them, and that the wharf was not made for that purpose, and if they wanted to move them into the machine-shop, we had no objection, and I signed that letter, Point Richmond Canal and Land Company, by myself as secretary, because the Canal Company

(Testimony of H. W. Wernse.)

owns the machine-shop.

Cross-examination.

Mr. LILLICK.—Q. Is that letter that you have just referred to the letter, if you know, that is in evidence here in Mr. Perry's deposition?

A. I don't know, Mr. Lillick.

Q. Is the letter, Claimant's Exhibit 12, the letter you have just referred to (handing)?

A. This is one, but I also wrote them a letter, at least I am almost positive of it, that the Canal [577] Company, who owned the machine, gave him the privilege of putting them in the machine-shop; that may have been the only one, but I have a recollection that because of the condition of the wharf there I allowed him to move them in—they were moved into the machine-shop—they sent over and got the key.

Q. Then you don't know whether this is the letter that you refer to or not?

A. Well, I am of the opinion that that is not the letter that I refer to at this time.

Q. If you wrote another letter would it have been written on or about the same date?

A. It would have been written, I think, if not that date the day after that.

Q. Was there any reason why you wrote another letter under the title of secretary of the Point Richmond Canal and Land Company?

A. Yes, because the Point Richmond Canal and Land Company owns the machine-shop and not the Richmond Dredging Company.

Q. I call your attention to the fact that apparently

(Testimony of H. W. Wernse.)

this Richmond Dredging Company has been stamped over an erasure, and ask you whether your recollection might not be refreshed by that that this is the letter which in your testimony you referred to as having been signed by the Point Richmond Canal and Land Company?

A. That is the reason, I think I must have got the wrong stamp on this letter first and had to restamp this and the other one.

Q. If there was another letter it would be the same date?

A. It would have the same date. Since you call my attention, I would say it was the same date.

Q. But you are not positive that another letter was written?

A. I would not be positive unless I could get a copy of the letter, but I feel that the letter was written because of them sending for the key to put these engines in the machine-shop. [578]

Q. Do you remember whether or not it was in the same language as this letter?

A. The other letter just referred to the breaking down of the wharf, and that they had the privilege to move into the machine-shop, if they desired.

Q. That is, if there was another letter?

A. If there was another letter.

Q. Do you know whether or not anyone else was present at the conversation you had with Mr. Connor in which you stated that you told him that you had the contract with the Santa Fe Railroad Co.?

A. We were in Mr. Connor's office; I don't know

(Testimony of H. W. Wernse.)

whether there was any one within hearing distance or not.

Q. Do you know whether Mr. Cummins was there?

A. Mr. Cummins was not there.

Redirect Examination.

Mr. TAUGHER.—Q. One other question: Did you know what motive power was being used on the dredger at the time you discovered the engines, the Samson gas engines had been taken off?

A. No, sir; I did not.

Q. I mean at the time? A. No.

Mr. LILLICK.—If you have no objection, I would like to put on Mr. Connor in surrebuttal out of order.

Mr. TAUGHER.—All right.

[Testimony of W. A. H. Connor, for Claimants
(Recalled in Surrebuttal).]

W. A. H. CONNOR, recalled for the claimants in surrebuttal.

Mr. LILLICK.—Q. Mr. Connor, you have just heard the testimony of Mr. Wernse with reference to a conversation which he says he had with you in your office in which he told you that the Richmond Dredging Company had the contract with the Santa Fe. Is it or is it not the fact? [579]

A. I shall have to say that it is not a fact, for the simple reason that if he had told me that we would not have leased him the dredger "Oakland."

Cross-examination.

Mr. TAUGHER.—Q. Then, Mr. Connor, will you explain why these words on lines 2 and 3, to be used

(Testimony of W. A. H. Connor.)

for the filling of the Richmond Canal lands only, were stricken out?

A. I have explained that two or three times.

Q. Explain it again.

A. They were stricken out at their request that the Richmond Dredging Company itself did not own those lands.

Q. It doesn't say the Richmond Company's lands at all.

A. That the Richmond Canal Company—it was the Richmond Land and Canal Company, or something of that kind, and they also said that if that was put in there they could not do a contract they had with the city for the streets, which we were given to understand that the city owned.

Q. Did you have any object in your mind at the time of preventing them from doing the work for the Santa Fe?

A. Most assuredly; I wanted to get that job myself when it came up.

Q. You wanted to get that job yourself?

A. Yes.

Q. Then why in the center, latter paragraph 1, these words "in solely on their lands" were they stricken out?

A. For absolutely the same reason, that this up here was stricken out, because their lands was not the Richmond Dredging Company's.

Q. Well, were there any lands at Richmond excepting the lands of the Santa Fe on which they might have done any filling with the "Oakland"?

(Testimony of W. A. H. Connor.)

A. All around there they owned, as I understand them, a big body of land on which they had made sales.

Q. Well, what length of pipe would it have taken to do any dredging [580] work that they might want to do on the lands of the Point Richmond Canal and Land Company or any lands that they had sold?

A. I don't know.

Q. On subdivisions of that land.

A. I don't know any particular lands that they sold. There is a great quantity of lands that lies under a 3,000 foot pipe-line there, a large quantity of it. As to whether it is all in one subdivision, and as to whether the Richmond Dredging Company or the Richmond Land Company or the Point Richmond Land and Canal Company own it, on which particular piece of ground it is, I don't know.

Q. You said you were trying to do the Santa Fe work; why didn't you mention in this letter that they were not to do the Santa Fe work?

A. In this letter?

Q. Yes.

A. I did not know at that particular time they were figuring on it at all.

Q. But prior to that time you had given them the bid that the Standard American Dredging Company had made on these same lands?

A. That was the year before.

Q. Are you in the custom of giving competitors a bid that you put in on jobs?

A. When they tell me they are not on the outside

(Testimony of W. A. H. Connor.)

dredging business, yes, and it is a matter that interests them in their own lands, and they bring the things to us to help us get a job, why shouldn't I give them that information?

Q. But you gave them this so they would help you get the job? A. Exactly.

Q. That was the reason you gave your contract there so that they might help you to get it?

A. As I remember, they were already helping us to get it done in order to improve their own property.

Q. Did you ever put in a subsequent bid on the Santa Fe work? [581]

A. I don't think that I ever did myself. I am quite positive I did not. I don't know as any of the other officers ever did.

Q. Where did you get all of the blue-prints and the descriptions that you had of the Santa Fe work?

A. I don't remember, absolutely. My remembrance is we got the blue-prints off the engineer of the railroad; I might be mistaken.

Q. Are you sure it was not from the Richmond Dredging Company?

A. I would not swear that they were not, because I really don't remember where I got them; it is a long time ago, you know.

Q. But you did not put any confining words in the charter-party that was made subsequent to this option that you offered on the "Oakland"?

Mr. LILLICK.—Objected to upon the ground that the agreement is the best evidence.

(Testimony of W. A. H. Connor.)

Mr. TAUGHER.—Q. For the reason that the Richmond Dredging Company would not take a dredger if there were any confining words in the charter?

Mr. LILLICK.—Objected to upon the ground that the agreement speaks for itself, and as this particular portion of the testimony has been gone over at least two or three times already.

A. Read the question. (The last question repeated by the Reporter.) I think I have stated before that we considered the confining words that are in the charter as sufficient.

(An adjournment was here taken until Monday, October 30th, 1911, at 3 P. M.) [582]

Monday October 30th, 1911.

[Testimony of H. C. Cutting, for Libelant (Recalled in Rebuttal).]

H. C. CUTTING, recalled in rebuttal, for libelant.

Mr. TAUGHER.—Q. Mr. Cutting, how many draft charter-parties were prepared by the Standard American Dredging Company and submitted to the Richmond Dredging Company leading up to the charter-party of February 26th, 1910?

A. The first one was the option which we had signed by Mr. Connor, which was mailed to us, I think, about February 4th.

Q. I hand you an envelope and ask if you will tell us if you ever saw it before, how it came into your possession, and how it is addressed.

A. This is an envelope in which the option that I speak of was received.

(Testimony of H. C. Cutting.)

Q. From whom?

A. The Standard American Dredging Company.

Q. What is the return address on that envelope?

A. It says here in the left-hand corner, "Standard American Dredging Company, 708-712 Merchants Exchange," which is their place.

Q. Is that the end of it?

A. "San Francisco. Harbor Improvements and Levee Building. Land Reclamation." It is addressed to the "Richmond Dredging Company, Monadnock Building. San Francisco, Cal.," and is postmarked "San Francisco, Cal., Feb. 4th, 1910, 8:30 P. M."

Q. And that contained what?

A. That contained the option.

Q. What option?

A. The option on the dredger "Oakland," and which is dated San Francisco, California, Feb. 4, 1910, addressed to the Richmond Dredging Company, signed "Standard American Dredging Company, by W. A. H. Connor."

Q. Now, when you received that option of February 4, 1910, in that envelope, what was done with the option by the Richmond Dredging Company or its officers?

A. Well, I noticed that they had a [583] confining clause in there about "used for filling of the Richmond Canal Lands only," and down further "in solely on their lands," and I told Mr. Wernse that that would be of no value to us at all.

(Testimony of H. C. Cutting.)

Mr. LILLICK.—We object to anything you told Mr. Wernse.

Mr. TAUGHER.—Q. Go ahead.

A. I told him to go down and see the Standard American people and tell them that this, of course, would be of no value because we had to use the boat for the Santa Fe contract, and Mr. Wernse went down and came back with these clauses scratched out and initialed by Mr. Connor and Mr. Wernse.

Mr. LILLICK.—We will ask that all Mr. Cutting testifies that he said to Mr. Wernse be stricken out on the ground it is incompetent, and not binding on the claimant.

Mr. TAUGHER.—Q. Now, subsequent to Mr. Wernse bringing back that option what further was done by the Standard American Dredging Company leading up to the charter-party of Feb. 26th, 1910?

A. I want to state in connection with this, I heard the evidence about a charter-party that contained provisions regarding payment in land, etc., that this is the only reference where there was ever any land spoken of.

Q. This is the only paper you mean?

A. This is the only paper; and that I did not pay any attention to that because it was of no interest to me; the only thing of interest was that we should have a dredger to do the work, and I knew there would be a charter-party drawn up later; so the only thing I was interested in was in having an option on the "Oakland," if they intended to keep the "Richmond"; and provisions for this option had

(Testimony of H. C. Cutting.)

been made at the time we signed the contract with the Santa Fe, which was the 31st of January. [584]

Q. Subsequent to that option what was done, if anything, by the Standard American Dredging Company looking to the making of the charter-party or leading up to the making of the charter-party of February 26th, 1910?

A. Well, now, we closed up this contract with the Santa Fe on January 31st, and the Santa Fe people were anxious for us to get to work, and I had told them that we would not make any arrangement for the "Oakland" or we would not take the "Richmond" away from the Standard people until they assured us that they would be ready for us to go to work, and I had them telegraph to Mr. Walker, the superintendent of the Santa Fe asking him if he would have his levees ready for us to go to work on February 20th, and they informed me that Mr. Walker said he would have his levees ready for us to go to work on the Santa Fe job on Feb. 20th.

As soon as we received that assurance from Mr. Walker we communicated it to the Standard American people and told them that we wanted the "Oakland" or the "Richmond"; but we had already talked that over and were going to take the "Oakland," and pursuant to that notification Mr. Cummins brought up to our office what is stated to be here the draft charter-party.

Mr. LILLICK.—Before you go any further, Mr. Cutting, we ask that the witness' conclusions as to the Santa Fe being anxious, what Mr. Cutting told them,

(Testimony of H. C. Cutting.)

and the testimony in regard to the telegram to Mr. Walker and Mr. Walker's conversation with the witness be stricken out.

The WITNESS.—There is no conclusion about that, Mr. Lillick, because it is all evidence in another case.

Mr. TAUGHER.—Q. Do not argue with counsel on the other side. Just confine your remarks to answering my questions. Before you go any further, is that the only draft charter-party that [585] was prepared by the Standard American Dredging Company and submitted to the Richmond Dredging Company, or were there more drafts than that one prepared by the Standard American Dredging Company and submitted to the Richmond Company?

A. This is the only draft charter-party that was submitted to me, and which was brought up to the office by Mr. Cummins.

Q. Were there any other draft charter-parties submitted to the Richmond Dredging Company, or to any other of its officers?

A. Well, none that I ever heard of, nor saw, and they certainly could not hope to get a charter-party through without submitting it to me.

Q. Then, just tell how that charter-party was submitted to the Richmond Dredging Company and what was done at the time of its submission to the Richmond Dredging Company.

A. Well, Mr. Cummins brought it up to the office, and I read it over until I came to section 10, and when I came to section 10 was the time when I al-

(Testimony of H. C. Cutting.)

lowed my anger to get a little the best of me, perhaps, and spoke in rather strong terms—but this is the section that I referred to as being a lemon; this is the section that I referred to as being the lemon that they were trying to hand me, and I can explain why it was a lemon, if you want to know.

Q. Just proceed and explain why you objected to that draft charter-party; state what part of the draft charter-party you objected to, and if you stated your objections at the time, tell us what you stated—the objection to the charter-party, if you stated your objections to the charter-party.

A. I called Mr. Cummins' attention to the fact that this charter-party said that we could keep the "Oakland" for long enough to complete 400,000 yards of filling on the land aforesaid, and I told him that, I says, there is a question, but long enough don't enter here. I says, "We have [586] got to have the dredger until we do the work or we want the 'Richmond,' " and I says—then it went on and said we would have to operate the dredger 24 hours continuously until 400,000 yards of filling should be done, and I told him that that gave altogether too much opportunity for dispute, because something might arise that we would have to leave the dredger lie idle for a day or so, and in that case, under this section 10, they could keep our "Richmond" and take away the "Oakland," so that we would be without a dredger, and I made it perfectly plain to Mr. Cummins that the charter-party had to state that we should have either the "Oakland" or the

(Testimony of H. C. Cutting.)

“Richmond” for our work over there, and that if he did not want to give us the “Oakland” on a proper charter-party he could bring back the “Richmond.”

Q. Did he leave a copy of that draft charter-party with you at the time?

A. He did not, he took it back with him.

Q. What was next done in these negotiations?

A. I don't know whether the final draft was submitted again or not, I don't remember, but there was no other draft charter-party that I ever saw. Section 10 was changed so that my understanding of it was that we were to have the “Oakland” until we had done the 400,000 yards, or we were to have the “Richmond.” We did not care to have the “Oakland” for any particular length of time, because the only thing that I could see where the “Oakland” would be of an advantage to us was that we could pump out on to the farthest limit of the Santa Fe lands without a booster with the “Oakland,” and we expected to do that work in about two weeks, using the soft material which Cummins and Wernse had picked out for the dredger to do. It afterwards happened that the Santa Fe did not keep up their levees and that soft material ran away, and we had to pump hard material up there. [587] But that was the only object of our having the “Oakland” because the “Richmond” would have been a very much better machine for us to use on the city contract.

Q. At whose suggestion was section 10 of the draft charter party made to read as it does in sec-

(Testimony of H. C. Cutting.)

tion 10 of the draft party as signed?

A. Well, I don't know who suggested the wording of the section 10, but all I said was that they would have to make it read so that there would not be a "for long enough," but that we should have the dredger, either the "Oakland" or the "Richmond," until we were finished with our work at Richmond, and the wording was fixed up over in the Standard American Dredging Company's office; I don't know who dictated it.

Q. Well, did you object to any other part of section 10 of the draft charter-party?

A. Well, to that part which said we had to operate the dredge continuously for 24 hours each day until 400,000 yards of filling shall have been done.

Q. That is section 9 that you are reading?

A. This is section 10 of the draft.

Q. Is it? A. Yes.

Q. State the objections, whatever they were.

A. I called their attention to the fact that under that section that could say any time, "Well, you have had this long enough to do the work, whether you have done it or not, and consequently we will take the 'Oakland' back and keep the 'Richmond,' " and that was what I objected to—that we must have it until we did the work.

Q. Now, just read over section 10 of the draft now and see whether anything else was objected to by you at that time.

A. I objected to their having any option on the "Richmond" for any definite time unless we gave

(Testimony of H. C. Cutting.)

it to them of our own free will and accord, and the proposition was talked over about the rental, and I [588] said, "Well, if we let you have the 'Richmond' until January 1, I do not object to the amount of rental," because at that time I saw plenty of work ahead to keep the "Richmond" busy until long after January 1, 1911, but the idea was that they were not to have the "Richmond" by any hook or crook unless we were perfectly willing to give it to them.

Mr. LILLICK.—I want to ask to strike out "the idea was" and the remaining portion of the witness' answer.

A. Just say the understanding was.

Mr. LILLICK.—We ask that that also go out unless the witness state what he said and to whom he said it.

The WITNESS.—I told them that we must have the "Oakland" or the "Richmond" until we had completed all the work we wanted to do at Richmond, and that the charter-party must not contain any clauses which would give them an option to take the "Richmond" against our will.

Mr. TAUGHER.—Q. Now, when the charter-party of Feb. 26th, 1910, was entered into did the Standard American Dredging Company know that the Richmond Company had contracted with the Santa Fe to do that filling work at Richmond?

A. Mr. Perry and Mr. Cummins in particular, because I had talked to them myself, were just as familiar with the Santa Fe contract and the fact that

(Testimony of H. C. Cutting.)

we endeavoring to close it up with them as we were with ourselves, and Mr. Cummins and Mr. Wernse we went over there for the purpose of testing the material, to see if sufficient soft material could be found without going outside of the canal limit to fill the area on the Santa Fe's ground north of Ohio Street, because that was a very long pump, and we did not think at that time that it would be possible to pump clay up there without a booster and that [589] was the only object of that inspection of the material at that time.

Q. But did the Standard American Dredging Company know at that time the charter-party of February 26th, 1910, was entered into that the Richmond Dredging Company had contracted with the Santa Fe?

Mr. LILLICK.—I object to that unless the contract was known about by some officer of the corporation. The witness can state what they knew by something that was shown them, but he cannot state that they knew unless he states the reason for it.

A. I told Mr. Cummins plainly that we had closed the contract with the Santa Fe; told him all about the contract, discussed it with him; they were just as familiar with the whole thing as I was, knew it was signed, when it was signed, and knew all about it. At the time he presented this draft charter-party he knew it was signed at that time; and Mr. Perry knew that we were trying to get the Santa Fe contract for six or eight months before that.

Mr. TAUGHER.—Q. When the Standard Ameri-

(Testimony of H. C. Cutting.)

can Dredging Company terminated the right of the Richmond Dredging Company to use the "Oakland" had the Richmond Dredging Company completed the filling work at Richmond?

A. It had not completed either contract.

Q. Who served that notice terminating the right of the Richmond Dredging Company to use the "Oakland"? A. Mr. Connor.

Q. On whom did he serve it?

A. He served it on me.

Q. What conversation did you have with him at that time? If any?

A. That was on August 13th, just about noon. I told him that we had not completed the Santa Fe contract; his answer was that, well, those people were anxious for them to get to work on that job, this oil company, and I says, "Well, I suppose you will bring back the 'Richmond'?" He says, "Well, I don't know; I think [590] there is an alternative." "Well," I says, "I don't know of any alternative." Then I says, "Well, by the way, what power are you using on the 'Richmond'?" I says, "Can you get electricity up at Walnut Grove?" Or before that, I had asked him where the dredger "Richmond" was, because I did not know, and he said, "No," they were not using electricity, but they had an Atlas gas engine that they had procured and the engine out of the "Wink," and I asked him how they were working, and he said they were doing fine; and that is the first intimation that I had that there was any gas engines on the dredger to take the place

(Testimony of H. C. Cutting.)

of those they had taken out. I knew they had used an electric motor on the Eureka job, and when I saw the engines over at Richmond, I thought that they were still using the motor on the boat.

Q. With the motor on, did you understand that the engines had been taken off and been placed by the motor at Eureka?

A. I don't know as I understand very much about it. I did not make any inquiry. The charter-party of Oct. 18th provides that they were to make all repairs and return the boat to us in the condition to immediately start work, and it was guaranteed by Mr. Perry personally, and whatever they chose to do with the boat I did not consider any of my business particularly until they brought it back, and then I expected them to return the boat in accordance with the terms of their charter-party?

Q. Did the Standard American Dredging Company ever ask permission to remove the Samson gas engines?

A. Never said a word about it, never asked any permission from anybody, that I know of, connected with the Richmond Dredging Company.

Q. When did the Richmond Dredging Company first learn that the Samson engines had been taken off the "Richmond No. 1"? [591]

A. The first time I knew of it I went over to Richmond and I think it was Bill Kruger told me that they had put some engines down on the wharf of the shop, and I says, "What engines"? And he says, "I think they are the engines out of the 'Rich-

(Testimony of H. C. Cutting.)

mond.' ” I paid no attention to that. About perhaps a week later I went over there and Kruger told me that those engines were on the edge of the wharf, and that they were breaking the wharf down. I walked down that way and glanced at them, did not give them any examination at all, but I saw they were breaking down the wharf and I came back to the office and told Dave to notify Mr. Perry’s office those engines were breaking down the wharf, and that they would have to be moved.

Q. Who is Dave?

A. Dave is the boy in the office: he attends to all the telephoning, etc.

Q. Did you have any conversation with Mr. Connor on that 13th day of August, 1910, about the ownership of the engines that had replaced the Samson gas engines?

A. Why, I did not have any conversation with him at that time as to the ownership of anything. Do you want to put this envelope in evidence?

Mr. TAUGHER.—Yes, let that be marked “Cutting Exhibit 2-A.”)

(The envelope is marked “Cutting Exhibit 2-A.”)

Q. In Mr. Perry’s deposition he was asked this question: “What, if anything, was said as to the contingency of the Richmond Dredging Company notifying you that they had use for or required the dredger ‘Richmond #1,’ ” and his answer was “Nothing.” What have you to say as to the correctness of that statement?

(Testimony of H. C. Cutting.)

Q. Well, let me see now; in what connection is that?

Q. Just look at the testimony; read a question or two back if you want to before you come to it.
[592]

A. I see, that is in connection with the negotiations which took place pending during the charter-party. Well, the way that question is framed, I don't know as anything was said at the time that the Richmond Dredging Company should notify them that they had use for the dredger. The proposition was that we were to have the "Oakland"; the understanding was that we were to use the "Oakland" long enough to allow them to complete the Eureka job, and as much longer as they desired to let us use it, and whenever they wanted the "Oakland" they were to return the "Richmond." Then if we completed all the work which we desired to do at Richmond and had no further use for the "Richmond" during the year 1910, that we were to let them have the "Richmond" during the year 1910 at a rental of \$800 a month.

Q. He further stated, in answer to this question, "At the time the charter-party was entered into was anything said between you with reference to the Atchison, Topeka and Santa Fe work to be done by the Richmond Dredging Company?

A. No, sir." Is that correct or otherwise?

A. That statement is absolutely wrong; not correct at all. Mr. Cummins was perfectly familiar with the fact that we had already closed the contract

(Testimony of H. C. Cutting.)

with the Santa Fe and the whole matter had been thoroughly discussed, and in relation to whether the "Oakland" could do that work without a booster, and that is why they went over to see if they could find soft material enough within the canal area to fill the area which was some three to four thousand feet away from the dredger.

Q. Now, how much pipe-line would be needed to do any dredging work that you had to do on the lands of the Point Richmond Canal and Land Company?

A. There is no point of the Point Richmond Canal [593] and Land Company's lands or the streets connected with them that is over 2,500 feet away from the point of dredging.

Q. Mr. Cummins, in testifying as to the value of the dredgers stated in reply to this question: "Can you give any other examples of dredgers worth from \$30,000 to \$40,000 with the rental value?"

A. We have just had chartered at San Pedro for a period of six months, a clam-shell dredge valued at \$25,000 for which we paid \$300.00 per month. What have you to say to that statement?

A. Well, I know nothing about the truth or falsity of the statement, but there must be some peculiar circumstance surrounding it, because that would be no rental at all for a machine of that value, and I think that is plainly evident by what has already been introduced in this case because it has been shown here that the Standard American Dredging Company paid \$200 a month for the rental of one

(Testimony of H. C. Cutting.)

Atlas gas engine, which they claim now is only worth about \$2,500. It don't seem reasonable to think that they could rent a dredger that was worth \$30,000 or \$40,000 for \$300 a month when they would pay \$200 a month for an engine that was worth say \$3,000 or \$3,500 at the outside.

Q. Did the Standard American Dredging Company, or any of its officers, explain to you the reason why they were so anxious for the "Richmond" to complete the Eureka job, Mr. Cutting? [594]

Mr. LILLICK.—Objected to as immaterial and irrelevant.

A. Well, I understood from them that they had delayed on getting to work on that Eureka job and that it had to be completed within a certain time, or there was a forfeiture clause which would operate; if they took the "Richmond" away and wanted to take another dredger up there, the delay would cause them to forfeit a whole lot of money, so they were very anxious to keep the "Richmond" at work on the Eureka job.

Mr. LILLICK.—I ask that that go out as being a conclusion of the witness.

The WITNESS.—It is not a conclusion at all, because they told me so.

Mr. LILLICK.—I ask that that go out also.

Mr. TAUGHER.—Q. Did your desire to prevent them from incurring that forfeiture have anything to do with the entering into the charter-party of February 26, 1910?

Mr. LILLICK.—I object to that as immaterial.

(Testimony of H. C. Cutting.)

A. Why, I had always been most friendly with Mr. Perry and the Standard American Dredging Company, and I desired to help them all I could in their work. We expected to get together on some big work over at Richmond later on.

Mr. TAUGHER.—Q. Mr. Cummins stated, in effect, that if you had procured the contract for the Key Route dredging or the dredging to be done at the Key Route Basin, that you could not have done it even had they permitted you to have the possession of the “Richmond No. 1”—in effect, that is what he stated. Now, what have you to say as to the correctness of that statement that the Richmond Dredging Company could not have done the work had they had that contract. [595]

A. I think this statement was to the effect that the “Richmond” in its present condition could not do that work, and as to that statement, he is correct. But we had discussed many times a proposition of changing the “Richmond” from a 12 to a 15-inch dredger, and I had a barge at Richmond which was completed and which could have been made into a 15-inch dredger—well, you could not make it into a larger than 15-inch dredger—within a short time, if anyone had a contract which would justify the necessary expense, and with 2-15-inch dredgers there would be no trouble in us doing that work, and we would have bid on the job, if we had an opportunity. Now, I want to say this conversation of Mr. Cummins regarding these motors, us taking the motors that they had on the Eureka job, was

(Testimony of H. C. Cutting.)

in connection with changing the "Richmond" into a 15-inch machine, and the only question I asked was if the motor was heavy enough to operate a 15-inch pump; I understood that the motor used on that job was rented by the Standard American Dredging Company, and I think I mentioned at that time, well, then, I could probably rent that motor to run a booster on the Santa Fe job.

Q. Now, just one other question, Mr. Cutting, as to the change in paragraph 10 as it reads in the draft charter-party to the words in which it reads in the charter-party as signed. Mr. Cummins said that he suggested that change. Mr. Cummins, at page 308, in his testimony stated that he suggested that change; what have you to say to that statement?

A. Well, I don't know who suggested the wording, but I know that I told Cummins very plainly that he would have to change the section very materially or bring back the "Richmond," that I did not want the "Oakland" under any such terms. [596]

Cross-examination.

Mr. LILLICK.—Q. The most of the negotiations with regard to this charter-party itself were had between Mr. Wernse and Mr. Cummins and Mr. Connor, were they not, Mr. Cutting, excepting only this option that was brought over to your office and you discussed it with Mr. Wernse?

A. Well, I don't know as there was much more negotiations to it. I will state that when there was a paper to go over to their office that Mr. Wernse took it over.

(Testimony of H. C. Cutting.)

Q. As I understood your direct examination here this afternoon, you said that you first had a talk with Mr. Cummins and then after that Mr. Wernse went from your office with instructions from you back to their office before the final draft was signed.

A. You did not understand it, I guess, Mr. Lillick. What I said, Mr. Lillick, was that Mr. Cummins brought that over and that I objected very strenuously to the then form of section 10 and that Mr. Cummins got a thorough understanding of what was necessary in order that we take the "Oakland" instead of the "Richmond" and that he took the charter-party with him when he left, and left no copy at all in our office; therefore it would be impossible for me to send Mr. Wernse over with a copy of the draft charter-party.

Q. And, then, after that another charter-party was drawn up and brought over to your office, and as I understand your testimony this afternoon you went over that with Mr. Wernse and then Mr. Wernse took that back to their office, which was the final draft, the one that was executed, and Mr. Wernse after instructions from you went over there to their office with that—is that the fact?

A. Well, I don't know whether Wernse brought that charter-party in or whether somebody else brought it in; I was in and out a great deal; anyway, the charter-party was in the office [597] the final charter-party as signed.

Q. Do you know how many conversations you had with Mr. Cummins?

(Testimony of H. C. Cutting.)

A. I believe it was signed when it was brought to the office.

Q. Do you know how many conversations you had with Mr. Cummins?

A. In fact, I am sure it was signed when it was brought in. How many conversations I had with Mr. Cummins?

Q. Yes, about the charter-party.

A. No. I don't remember any more than the one which I spoke of.

Q. Was Mr. Connor with him at that time?

A. No; Mr. Cummins was alone.

Q. Do you remember having seen Mr. Connor and Mr. Cummins together about this agreement?

A. Well, I think that is the only time that I saw any of them after we had signed the contract with the Santa Fe and pending the signing of the charter-party.

Q. Do you know whether you ever saw Mr. Connor and Mr. Cummins together in regard to this agreement?

A. Well, as I stated, that is the only time, the time that Mr. Cummins brought over that draft charter-party.

Q. You don't know whether Mr. Connor was with him or not?

A. No, Mr. Connor was not with him.

Q. Then, you don't remember any conversation that you had with Mr. Connor and Mr. Cummins together?

(Testimony of H. C. Cutting.)

A. No. That was the only conversation that I had.

Q. Did you ever have any conversation with Mr. Connor at all about this agreement?

A. No, not that I remember of, not prior to the signing of the charter-party.

Q. Are you sure that there was only one draft of the agreement and that draft the draft about which you have just testified [598] as the one you object to section 10 being in?

A. Well, if you call that option a draft, that is the draft that referred to their taking some land but that was just simply an option for us to use the "Oakland."

Q. That is the only proposed agreement between you that had anything in it about lands?

A. That is the only one. There was some talk of Perry doing a lot of filling for us and taking some land in payment, a long time previous to this, but in connection with this Santa Fe work and the work for which we actually chartered the "Oakland" there was no talk about lands other than what is contained in that option, and that came from the Standard American Dredging Company's office without any consultation from us.

Q. The conversation that you had with Mr. Perry in regard to the filling on the Atchison, Topeka and Santa Fe work was had about a year before February 26th, 1910, was it not, Mr. Cutting?

A. Why, I had been talking to Perry about that contract for two years, and we talked about it over

(Testimony of H. C. Cutting.)

and over again.

Q. Had you had any talk with Mr. Perry about that contract within six months from the time of February 26th, 1910?

A. Yes. I had seen Perry about the time that we signed the charter-party of October 18, along that time.

Q. And talked to him about the Atchison, Topeka and Santa Fe work?

A. I told him that it looked like at last as though that the Santa Fe was going to sign up for that work over at Richmond, and that is why I was particular that the time at which the charter-party of October 18 should end should be no later than three months from date, or January 20th. [599]

Q. Do you remember when it was that Mr. Cummins and Mr. Wernse went over to the Atchison, Topeka & Santa Fe right of way and looked over the ground and made those soundings?

A. Why, I think somebody—I don't know who went over with Wernse—I think there was somebody went over with Wernse along back in May, but there might not have been—the Standard American Dredging Company may have written that letter to the Santa Fe all on information which we gave them, and that is my impression at this time. Wernse went over there with Cummins; I say it was Cummins; it might have been Mr. Knight, but I think it was Cummins, after we began to talk about using the "Oakland" for doing the Santa Fe work.

Q. How many conversations did you have with Mr.

(Testimony of H. C. Cutting.)

Cummins about the agreement of February 26, 1910?

A. Well, that is the only one that I remember, at the time that he brought up the draft charter-party.

Q. It is your recollection at that time that you had signed the contract with the Atchison, Topeka & Santa Fe for the filling?

A. Oh, yes, I know we had told him that because I told him at that time it would take 225,000 yards to do the Santa Fe contract and about 100,000 yards to do the street contract, and that as we were not going to make any levees on the street job that we would have to pump pretty near twice as much material as paid for.

Q. Didn't you tell him at that time that it would take four cubic yards for one to do the work at Richmond on account of the material being so soft that it would flow over from the streets on to the blocks that you wanted to fill?

A. Oh, no, no; I never accused the material at Richmond of being so soft that it would get very far away from the end of the pipe-line.

Q. You never made the statement?

A. I have had too much [600] experience with that material.

Q. Then, you never made a statement to him that you expected four yards of the material to run over the lands to one that stayed on the street?

A. No. The only object of looking for soft material was to get enough material to fill the area between Ohio Street and the east leg of the Santa Fe wide track, which the contract with the Santa Fe

(Testimony of H. C. Cutting.)

provided should be enclosed by levees constructed at the expense of the Santa Fe railroad; and the object was, their argument was that I could fill that area with the "Oakland" without a booster, and I wanted to be sure that we could find enough soft material that we could pump that distance. You see?

Q. Yes.

A. Because I said we could not afford to use a booster with the "Oakland"; we could afford to use a booster with the "Richmond" because even if we had to buy a new pump, the pump would be available whenever the old pump was worn out, but I could not afford to buy a booster for the "Oakland"; so I wanted to be sure, you see, that we had soft material enough to do that piece of work farthest away before I could agree to take the "Oakland."

Q. Did you expect to do the Stockton job at the same time you were doing the Richmond job?

A. Well, now, that Stockton job came about in this way. I met Mr. Connor on the boat coming over from Richmond, and he said, this was sometime in June—he told me that they had finished the Eureka job, and that they were doing a little work at Alameda with the "Richmond," and that they would soon be through with it; gave me to understand that they would return the boat to me within the next month or so, and in order that I would not be operating the "Oakland" to just complete the last [601] end of my work at Richmond and letting the "Richmond" lie idle, I put in a bid on that Stockton job after sending Mr. Wernse over to the office of the

(Testimony of H. C. Cutting.)

Standard American Dredging Company, and asking them if they were going to bid on the Stockton job, because if they were going to bid on it they would still be using the "Richmond" and would not return it to me.

Q. Read the answer, Mr. Reporter.

(The answer repeated by the Reporter.)

A. I do not want to be understood that there was any collusion between the offices of the Standard American Dredging Company and the Richmond Dredging Company as to contracts.

Q. Did not the Stockton have to be begun within 30 days after bids were opened?

A. It was 30 days or less; I am not sure.

Q. Did the contract with the Santa Fe permit your putting the soft material in that fill?

A. The contract with the Santa Fe said nothing as regards the kind of material.

Q. Didn't they actually require you to put hard material in it?

Q. Well, in this way, they required me to put hard material in there, that they allowed their levees to break so repeatedly and they failed to build levees to hold the material, so that all of this soft material that we had so carefully picked out to fill the area, the distant area, was allowed to run away, and we had to fill it, most of it, with hard material; they had no right whatever to dictate what kind of material; there was nothing understood, and in fact I had told Mr. Walker and Mr. Hayden at the time of making the contract that it was a very difficult thing to do,

(Testimony of H. C. Cutting.)

to put material that far, and that I would have to find sufficient soft material to do it; they wanted me to contract to put in about 15,000 more yards further up, but I would [602] not attempt it because I did not think we could find sufficient soft material to do it.

I just want to make a statement here. I never at any time said in talking about those motors which were put on the "Richmond" at Eureka that the Samson engines had never furnished us power enough. I never made any such statement; never had any idea of using the motors instead of the engines.

Mr. TAUGHER.—That is all of our case.

[Testimony of W. A. H. Connor, for Claimants
(Recalled in Surrebuttal).]

W. A. H. CONNOR, recalled in surrebuttal for claimants.

Mr. LILLICK.—Q. Mr. Connor, I hand you an agreement and ask you whether or not this agreement is the first proposed agreement that you took to the office of the Richmond Dredging Company—with the exception of the pencil memoranda. (Handing.)

A. Yes, that is the same one that came next after the one that is called the option.

Q. Did you take that proposed draft to the office of the Richmond Dredging Company and while there discuss it with Mr. Cutting?

A. Mr. Cummins and myself did; yes.

Q. Is that the draft of the proposed agreement

(Testimony of W. A. H. Connor.)

that Mr. Cutting referred to as the lemon?

A. That is the one; yes.

Mr. LILLICK.—We offer that in evidence and ask that it be marked Connor's Exhibit 1 in Surrebuttal—except as to that portion of it in pencil.

(The document is marked "Connor's Exhibit 1 in Surrebuttal.") [603]

Cross-examination.

Mr. TAUGHER.—Q. Was Mr. Perry in town at the time this was prepared?

A. I do not think so; although I would not be positive.

Q. Who prepared this?

A. I could not say as to who did the actual preparation of it, but it was taken from, drawn from the option and following along the lines of the option.

Q. But don't you know who prepared it?

A. No, sir. I could not say positively who prepared it. I think possibly Mr. Spilman might have done so, because he did most all of our work in preparing papers of that nature; but I would not be positive that he did.

Q. When was his cover put in here?

A. Presumably at the time. I don't know of any other being put on.

Q. Well, when did you first see this?

A. Why, I could not say whether it was the same day or the date I took it up there.

Q. When did you take it up there?

A. I could not remember the exact date; it was right along in there when we were figuring on it;

(Testimony of W. A. H. Connor.)

that is the only time I ever went to Mr. Cutting's office in company with Mr. Cummins.

Q. Were you at Mr. Cutting's office in regard to this just the one time?

A. That is all I remember of.

Q. You went there once, you and Mr. Cummins?

A. Just the one time; that is, in regard to the charter-party.

Q. Where did you get the cover for this?

A. I don't remember where I got it.

Q. Was this wrapper on the paper, the copy that you took to Mr. Cutting's office?

A. I could not tell you; it might have been or it might just have been a temporary draft pinned with a pin at the top; I couldn't remember.

Q. Who prepared this cover for it after you took it up to Mr. Cutting's office?

A. I won't say that the cover was not on them because I don't remember. [604]

Q. Well, do you keep any of Mr. Spilman's legal covers in your office? A. No, sir.

Q. But you can't say whether that cover was on there at the time you took it up to Mr. Cutting's office? A. Very presumably it was.

Q. I notice a pin was run through here; was it held with a pin at the time or with these clips that are now on there?

A. Well, it is probable that Mr. Spilman drew it up and returned it just pinned together. I remember he does that very often with these contracts when incomplete. That little clip up there looks like some

(Testimony of W. A. H. Connor.)

clips that came out of my desk, that I was using myself at that time, and I do not remember anybody else had any clips in our office of that kind. I don't remember whether Mr. Spilman's office did it or not.

Q. But you stated on your cross-examination that you had nothing whatever to do with the preparation of any of these charter-parties until four days before, about four or five days before the charter-party was signed on February 26th, 1910.

A. Yes.

Q. Then this must have been within four days, was it?

A. They all came right along close together; there was practically no cessation of negotiations when we started until we finished it.

Q. This must have been not later than February 20, 1910? A. I should say so; all I know—

Mr. LILLICK.—Q. What were you going to say —“all I know” what?

A. Why, that is the only thing that I can remember.

Mr. TAUGHER.—Q. In whose handwriting are these pencil memoranda?

A. I could not tell you for sure. My remembrance is they were made on Mr. Cutting's desk; whether Mr. Cutting made [605] or Mr. Wernse or Mr. Cummins—they are not mine, that is all I know. The only thing that I remember very particularly about it was Mr. Cutting coming to this on it and saying that would go out. Whether he made other memoranda on it, I don't remember.

(Testimony of W. A. H. Connor.)

Q. Did you bring two or one copies of this to Mr. Cutting's office? A. I could not remember.

Q. This is the original that you have here; did you bring a copy of that to his office?

A. I don't remember. I don't remember whether I did or not. It is very presumable that we had a copy with us, that might have been kept in our pocket, and when everything was all through we never delivered it; but that is all I know about it.

Q. But Mr. Cutting got very angry when you presented this to him, did he?

A. He surely did.

Q. He thought that was *not kind* of treatment he should get from the Standard American Dredging Company?

Mr. LILLICK.—I object to what Mr. Cutting thought from Mr. Connor.

Mr. TAUGHER.—Q. Did Mr Cutting state that was not the kind of treatment he expected from the Standard American Dredging Co.?

A. He said we could not expect him to take a lemon like that; that was one of his remarks. Now, of course, he made a whole lot of remarks; he had objections to make all the way through it.

Q. Now, in any of these negotiations did Mr. Cutting ever have any lawyer present?

A. Why, my remembrance is that it is the only time that I was present with Mr. Cutting in his office, and I am quite sure that there was no lawyer present at that time.

(Testimony of W. A. H. Connor.)

Q. Whose initials are those here?

A. Those are Mr. H. W. Wernse's.

Q. That is his writing on that paper?

A. That looks just like his writing. I would not absolutely swear it was, but it looks [606] like his initials on there where it has been initialed.

Q. Well, then, Mr. Wernse was present at the time this was brought up there, was he?

A. Mr. Wernse, Mr. Cutting, Mr. Cummins and myself.

Q. Well, now, how does it come that Mr. Wernse's initials would be on there if Mr. Cutting was doing the scratching up and the talking?

A. I believe—I can't remember exactly, but I believe that when we got started, why, that was possibly the first objection, and he crossed it out and initialed it.

Q. Are you sure Mr. Cutting was there at all?

A. Oh, yes, yes; absolutely.

Q. You are sure that Mr. Cutting was there?

A. Absolutely.

Q. It was not Mr. Wernse alone?

A. It was not; Mr. Cutting is the one that made those crosses.

Q. That isn't Mr. Cutting's writing at all on there?

A. No; Mr. Cutting blew up when he got down to that part.

Q. What did he blow up about?

A. He got out of patience with it and called it a lemon, and said he would never have it, and gradu-

(Testimony of H. C. Cutting.)

ally controlled himself and commenced to read it over and cross it out, and when he got on to the next page, he stated he would not stand for anything like that.

Mr. LILLICK.—That is all.

[Testimony of H. C. Cutting, for Libelant (Recalled in Rebuttal).

H. C. CUTTING, recalled in further rebuttal for libelant.

Mr. TAUGHER.—Q. Look at this document, Mr. Cutting, which I hand you, identified by Mr. Connor, and I will ask you if you ever saw that document before.

A. I don't remember of ever having seen it before.

[607]

Q. Are any of the pencil memoranda on this draft in your handwriting?

A. All of it is in Mr. Wernse's handwriting, and the "out"—I notice where a big section is scratched and marked out, is not in my handwriting, because the "t" is not crossed, and I always cross a "t," no matter whether it is in the final letter or not.

Q. You never make a "t" of that kind?

A. Never make a "t" of that kind. There isn't a scratch on there from me.

Q. Do you remember of having seen this document before?

A. I don't remember of ever having seen it before.

Q. None of the pencil memoranda are in your handwriting? A. No, sir.

Mr. TAUGHER.—That is all of our testimony.

Mr. LILLICK.—That is all of our testimony.

Testimony closed.

[Endorsed]: Filed Nov. 15, 1911. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [608]

[Style of Court, Title and No. of Cause.]

Deposition of Raymond A. Perry, etc.

To Richmond Dredging Company, a Corporation, Libelant, and to J. L. Taugher, Esq., Proctor for said Libelant:

You are hereby notified that Raymond A. Perry will be examined, *de bene esse*, in the above-entitled cause on behalf of the claimants therein, before Francis Krull, Esq., duly appointed by the District Court of the United States for the Ninth Circuit, Northern District of California, a United States Commissioner, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the Act of Congress in that behalf, on the 2d day of October, A. D. 1911, at 8:30 o'clock A. M. at the office of Ira S. Lillick, No. 607 Kohl Building, on the northeast corner of California and Montgomery Streets in the City and County of San Francisco, in the District aforesaid; and you are hereby further notified to then and there appear and propound such questions to said witness as you may deem fit.

The cause for taking the deposition of the above-named witness is that he is bound on a voyage to sea, and out of the district in which the above-entitled

case is to be tried, and to a greater distance than one hundred (100) miles from the place of trial, before the time of trial.

Yours, etc.,

J. S. SPILMAN,

IRA S. LILLICK,

Proctors for Claimants.

Dated: San Francisco, Cal., September 30th, 1911.

Served on J. L. Taugher at 12:26 P. M., Sept. 30, 1911.

IRA S. LILLICK. [609]

[Style of Court and Title of Cause.]

BE IT REMEMBERED that on Monday, October 2d, and Tuesday, October 3d, 1911, pursuant to notice of counsel hereunto annexed, at the office of Ira S. Lillick, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., Raymond A. Perry, a witness produced on behalf of the claimants.

Ira S. Lillick, Esq., and J. S. Spilman, Esq., appeared as proctors for the claimants, and J. L. Taugher, Esq., appeared as proctor for the libellant, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between

the proctors for the respective parties, that the deposition of Raymond A. Perry may be taken on behalf of the claimants, at the office of Ira S. Lillick, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, on Monday, October 2d, and Tuesday, October 3d, 1911, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Clement Bennett.

It is further stipulated that the deposition, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [610]

R. A. PERRY, called for the claimant, sworn.

Mr. LILLICK.—Q. What is your name—

Mr. TAUGHER.—At this time I want to interpose an objection to Mr. Perry's testimony being taken by deposition, but I here consent that his evidence be taken under the order of submission heretofore made in this case, and I further notify Mr. Perry, Mr. Lillick and Mr. Spilman that if any deposition is taken here I will ask to have it considered as having been taken under the order of submission heretofore

(Deposition of R. A. Perry.)

made in this case. (Addressing counsel.) Does anything appear now as to the probability of Mr. Perry's return in time for the trial of this case?

Mr. LILLICK.—I am going to question him about it, and you can interpose any objection you like.

Mr. TAUGHER.—I want to know if it will be understood between the parties preliminarily that he will or will not be here at the trial of this case?

Mr. LILLICK.—I know nothing about it.

Q. What is your name, age and residence?

A. Raymond A. Perry; age, 43; residence, 333 Birch Court, Oakland.

Q. Are you about to start on a voyage to sea?

A. Yes, sir.

Q. To where? A. Honolulu.

Q. How far is Honolulu from San Francisco?

A. About 2,200 miles.

Q. How long do you expect to be gone?

A. I cannot tell exactly; I will get back as soon as I can. I might be able to sail at the latter part of this month and I might be held over until next month for returning to San Francisco. [611]

Q. When are you going to start, Mr. Perry?

A. The 4th of October.

Q. How long have you been in the dredging business? A. 20-odd years.

Q. What has been your experience with dredgers during that time? State in a general way what you have done on dredgers, and with respect to working upon them.

A. Some 23 years ago I was an engineer on a

(Deposition of R. A. Perry.)

dredge, an engineer for sometime afterwards. I have been superintendent of dredgers for other companies, and later on I became a partner in the companies I was working for at that time. Since that time I have been in business for myself principally.

Q. What is your present position with the Standard American Dredging Company?

A. I am president of the company.

Q. During your experience as you have just given it, have you had occasion to build dredgers?

A. I have built a great many dredgers.

Q. How many approximately?

A. Probably 15.

Q. Were any of those dredgers hydraulic suction dredgers? A. Most of them.

Q. Are you acquainted with the character of dredge that the "Richmond No. 1" is?

A. Yes, sir.

Q. Will you give us a description of the dredge?

A. "Richmond No. 1" is known as a hydraulic harbor dredge. It is equipped with a 12-inch suction and discharge pipe, together with a 12-inch centrifugal pump, a ladder carrying the suction pipe and cutter-head and cutter, which cutter is used to disintegrate the material for taking it to the pump. The pump is driven by a pair of gas engines having a rated horse-power of 125. [612]

Q. Are you speaking of the gas engines that were on the dredge? A. Yes, sir.

Q. Previous to the time that you took her?

A. The gas engines that I speak of were the ones

(Deposition of R. A. Perry.)

which were on board the dredge when we chartered same. The hull or barge carrying the machinery is 28 feet beam.

Q. Let me interrupt you. I hand you a blue-print, and ask you whether or not that blue-print correctly describes the "Richmond No. 1"?

A. Yes, sir. This shows the dredge as constructed and described.

Q. Do you know when that blue-print was made?

A. I cannot give you the exact date, although the blue-print states the date that it was made as the third day, eighth month of 1907.

Mr. LILLICK.—We offer the blue-print in evidence and ask that it be marked Claimant's Exhibit No. 1.

Mr. TAUGHER.—I object to the introduction of the blue-print upon the ground that it has not been sufficiently proven, identified or shown to be correct.

(The blue-print is marked "Claimant's Exhibit No. 1.")

Mr. LILLICK.—Q. I hand you a photograph and ask you what that photograph is. (Handing.)

A. It is a photograph of the dredge "Richmond."

Q. Do you know when it was taken?

A. It was taken shortly after the charter-party was made for the dredge "Richmond" while the dredge was being moved from the Oakland Channel into Lake Merritt.

Q. You speak of the charter-party. Which one do you mean?

A. The first charter-party of the dredge. I do not

(Deposition of R. A. Perry.)

remember the date. [613]

Q. Do you know approximately? What year was it? Can you say whether it was 1909 or 1910?

A. It was 1909. I think it was March, 1909. I do not remember the exact month.

Q. By saying it was a photograph of the "Richmond," do you mean the "Richmond No. 1"?

A. Yes, sir.

Mr. LILLICK.—We offer the photograph in evidence and ask that it be marked Claimant's Exhibit No. 2.

Mr. TAUGHER.—Objected to upon the ground that it has not been sufficiently identified or proved to be correct.

(The photograph is marked "Claimant's Exhibit No. 2.")

Mr. LILLICK.—Q. I hand you another photograph and ask you what it is.

A. That is the dredge "Richmond No. 1."

Q. State when that photograph was taken.

A. That was taken at the time that we were moving the dredge from Oakland Channel into Lake Merritt in 1909, March, I believe.

Mr. LILLICK.—I offer the second photograph in evidence and ask that it be marked Claimant's Exhibit No. 3.

(The photograph is marked "Claimant's Exhibit No. 3.")

Mr. TAUGHER.—Q. Do you know who took those photographs, Mr. Perry? A. Yes, sir.

Q. Who took them? A. Mr. Connor.

(Deposition of R. A. Perry.)

Q. He is in the employ of your company?

A. Yes, sir.

Q. Were you present when they were taken?

A. Let me look at one of those photographs?

Q. Were you present when either of those photographs were taken?

A. I want to see. Let me see the other one and see if I was there? It seems to me that I was there. (After examination.) I don't remember whether I was present or not. [614]

Mr. TAUGHER.—I make a further objection to the introduction of those photographs upon the ground that they have not been sufficiently identified.

Mr. LILLICK.—Q. How many times have you seen "Richmond No. 1"? A. A great many times.

Q. Do you know the dredge well enough to be able to tell whether or not those are correct photographs of her? A. Yes, sir.

Q. Are those photographs, both of them, correct photographs of the dredger in that they show the exact kind of dredge she is and as nearly as any photograph can show the dredge that she actually was on those dates?

Mr. TAUGHER.—I object to the question as leading and suggestive.

A. Yes, sir.

Mr. LILLICK.—Q. Do you know whether or not any change was made in the film of the photograph to make any changes in the photograph itself? Speaking now of your knowledge of the dredger as she was at that time, and whether or not the photo-

(Deposition of R. A. Perry.)

graph is a correct photograph of the dredge as she was on the dates that the photographs were taken?

A. The photograph is correct showing the dredge as it appeared at the time that these photographs were taken.

Q. Mr. Perry, will you now continue with your description of the dredger, using if you so desire either of the photographs or blue-prints?

A. The length of hull or barge is 70 feet; the depth of barge is 6 feet 10 $\frac{1}{4}$. In addition to the gas engines—

Mr. TAUGHER.—Q. Just a moment Mr. Perry, you are reading that directly from the blue-print and not from your own knowledge; [615] is that what I understand?

A. I know the length of the hull and I know the other dimensions within an inch or so. The reason I looked at the blue-print was that I could give it to within an inch.

Mr. LILLICK.—Q. You know whether or not the blue-print is correct by your own knowledge of the dredger obtained from observations, do you not?

A. Yes, sir, as to general dimensions arrangement of the machinery, and the machinery therein installed.

Q. What is her width? A. 28 feet.

Q. About how much water does she draw carrying the engines that were on board of her at the time the charter-party of February 26th, 1910, was entered into? A. 3 foot 10 inches.

Q. Can you tell us what the tonnage of the dredger

(Deposition of R. A. Perry.)

was at that time? A. About 275.

Q. Do you know whether or not the dredger is registered in the custom-house? A. She is not.

Q. Do you know whether she is enrolled in the custom-house?

A. She is not. In addition to the gas engines which were a part of the equipment on this dredge there was a steam engine or winch located in the pilot-house, which winch operated drums known as winding machinery. There was also a small boiler located on the dredge for the purpose of supplying steam power for this winch engine and some small steam pumps used for furnishing circulating water to the gas engines, centrifugal pump, pumping bilges and other general uses on the dredge. In addition to the dredge boat itself there were certain pontoons, anchor-scows and anchors, pontoon and shore pipe, which pontoon and shore pipe is used for the **purpose of delivering** the material from this centrifugal pump on board of the dredge to the shore. [616]

Q. How is the dredge operated as to excavating material?

A. As to the operation of the dredge it is as follows: first, the front timbers are dropped from the hull to the bottom of the river; there being two spuds when the dredge is in operation, one spud only is on the bottom; when the dredge is swinging for the purpose of swinging the dredge, anchors or dead men are used for the purpose of attaching the swinging wire leading from the anchor to the swinging drum which revolves the dredge on the pivot formed

(Deposition of R. A. Perry.)

by the spuds making a horizontal cut on the arc of the spud. The ladder carrying the cutter is lowered to the surface of the ground and lowered into the cut if material is reasonably soft, about 2 feet. The dredge is then swung its full width which would make a cut of about 100 feet in width. The material is excavated 2 feet in depth and about 3 feet headway. Then the cutter is lowered an additional 2 feet and the operation performed successfully until the desired depth is obtained. Thereupon the ladder is raised to the top of the embankment under the water. Then the second spud not in use when swinging is dropped, and the working spud is raised. By this operation the dredge is permitted to work ahead about 3 feet to a setup or fleet in this particular dredge, and then the operation as above described is repeated. In addition to the operation described it will necessarily follow that the excavator and pump is working at the same time that the dredge is fleet-ing.

The COMMISSIONER.—I shall have to leave now, with the permission of you gentlemen.

Mr. LILLICK.—Have you any objection, Mr. Taugher, to Mr. Krull leaving?

Mr. TAUGHER.—I do not wish to embarrass Mr. Krull, but I [617] should like him to return as soon as he conveniently can.

The COMMISSIONER.—I will do that.

Mr. TAUGHER.—I would rather have the Commissioner present.

The COMMISSIONER.—It will be more con-

(Deposition of R. A. Perry.)

venient then if you want me to be present, to have the deposition continued at the Postoffice building.

Mr. TAUGHER.—We will continue it to the Postoffice building if it is continued. Is that understood?

Mr. LILLICK.—No, it is not. If there is anything we can do to accommodate Mr. Krull, we will do it, but we are going on with this deposition until it is finished.

The COMMISSIONER.—I will get back as soon as I can. If any question arises as to the regularity of this deposition I will be back to pass on it.

Mr. TAUGHER.—I am entirely willing to have it continued to the Postoffice building, if it is on the ground of the convenience of the stenographer and the Commissioner.

The COMMISSIONER.—As we have started to take the deposition here, I think we had better complete it in this office. I do not think there is any objection to taking the deposition here. I will return as soon as I can.

Mr. LILLICK.—Q. Mr. Perry, how is the material which is excavated deposited on the land? Describe the operation.

A. In the area where the material is to be deposited this area mentioned is usually inclosed by dykes so that the material may be governed and held as may be desired. In this way the material being discharged in liquid form, probably 10 per cent solids, where the pipe-line is not too great a length, the water is raised and held within the levees so that the material may have an opportunity of settling. The sur-

(Deposition of R. A. Perry.)

plus water is drawn off usually through flood-gates.
[618]

Q. Referring to the dredger itself how is the material transferred to the dredger?

A. By means of centrifugal pump suction from the end of the cutter or excavator and by means of the centrifugal pump pressure after leaving the pump.

Q. What was the character of the work being done at Walnut Grove by the dredger when she was being operated here?

A. Making a railroad fill some 20 to 30 feet high.

Q. Was the work that was being done at Walnut Grove being done under contract? A. Yes, sir.

Q. I hand you a document indorsed "Agreement Southern Pacific Company and Standard American Dredging Company. Dated April, 1910," and ask you whether or not that is the contract under which you were doing the work at Walnut Grove (handing). A. Yes, sir, this is the contract.

Mr. LILLICK.—I offer the contract in evidence, and ask that it be marked Claimant's Exhibit No. 4.

Mr. TAUGHER.—I may object to its materiality. I cannot tell until I read the contract.

(The contract is marked "Claimant's Exhibit No. 4" and is as follows:) [619]

[Claimant's Exhibit No. 4.]

"THIS AGREEMENT, made and entered into this —— day of April, 1910, by and between SOUTHERN PACIFIC COMPANY, a corporation, created and existing under laws of the State of Kentucky, party of the first part, and STANDARD AMER-

ICAN DREDGING COMPANY, a corporation, having its office in the City of San Francisco, State of California, party of the second part:

WITNESSETH:

THAT IN CONSIDERATION of the sum hereinafter named to be paid by the Company to the Contractor, the Contractor agrees to grade the roadbed by hydraulic dredge, taking material from the bed of the Sacramento River, in accordance to specifications herein contained on line of Sacramento Southern Railroad, for a distance of 5698.5 feet, more or less, from point known as Engineers Survey Station 'T' 1170+00 to Engineers Survey Station 'E' 1450+00, through equation, and also that portion of a spur from the mainline of the Sacramento Southern Railroad to the Sacramento River, known as the 'S' line, between Engineers Survey Station 'S' 1177+44 and Engineers Survey Station 'S' 1182+22, a distance of 1471.8 feet, more or less, all in the County of Sacramento, State of California, and in Reclamation District No. 554.

The work as aforesaid to be commenced at such points, and to be carried on to completion with such rate of progress by the contractor, as the Company may from time to time direct.

In consideration of the full and faithful performance of the conditions of this agreement, the Company agrees to pay to the Contractor. [620]

FOR THE GRADING WORK TO BE DONE in the above mentioned 5698.5 feet, more or less, of the mainline and the 1471.8 feet of the above mentioned 'S' line spur from the mainline to the Sacramento

River, for material of any kind encountered in excavation and in borrow pits used for obtaining material to form embankment, whether in the bed of the Sacramento River or not, the sum of thirty-four cents (\$0.34) per cubic yard.

There is to be no over-haul and no charge for over-haul allowed for in this contract, the price of thirty-four (34) cents per cubic yard covering entire delivery of material from Sacramento River for building embankments as above mentioned.

The quantities of the embankment shall be measured and paid for by prism measurement of the embankments above the ground surface as directed to be constructed, said direction to be by stakes set and marked by the Engineer at profile (or formation) grade for roadbed widths herein specified or for extra width of top of roadbed embankments per specifications or for allowance for extra height of roadbed embankments to provide for expected settlement, all as shall be considered by the Engineer to be suitable, and from said stakes defining the top of the embankments a uniform slope of one and one-half ($1\frac{1}{2}$) horizontal to one (1) vertical shall be assumed to run to intersect the ground surface.

GENERAL SPECIFICATIONS FOR GRADING:

The center of the roadbed shall conform accurately to the center line of the railroad as staked out or otherwise indicated on the ground and to proper curvatures and grades as described and defined by the Engineer, and the Contractor shall make such [$620\frac{1}{2}$] deviations from these lines and grades as

the Engineer may require.

The roadbed on embankments shall be of the uniform width of eighteen (18) feet at profile grade, unless otherwise directed by the Engineer, and shall be finished to a true and even surface and to conform to the grades set by the Engineer.

Embankments shall be built to a uniform slope of one and one-half ($1\frac{1}{2}$) feet horizontal to one (1) foot vertical, unless when decided to vary the same, and in all such cases the slopes shall be built as the Engineer may direct.

All embankments will be built with a half width in excess of the Standard half width specified of five per cent (5%) of the vertical height from each slope stake to profile grade.

In performing this work of building embankments by hydraulic dredge, taking material from the bed of the Sacramento River from various points, all material taken for building parallel dikes to impound material dredged from Sacramento River shall be taken within limits of the slope stakes directing form of the embankments, these dikes to form part of the completed embankments, and no material shall be taken between these slope stakes and the limits of the right of way, without permission of the Engineer.

All necessary equipment, including pipes, and flood gates for taking care of water shall be furnished by the Contractor, and the removal of the equipment off the right of way of the Sacramento Southern Railroad shall be done by the party of the second part without cost to the party of the first [621] part, and any damages accruing from the performance of

the work of building embankments by hydraulic dredge shall be borne by the party of the second part, and the party of the first part shall not be held liable for any damages whatever caused by the performance of building embankments by hydraulic dredge.

The hydraulic dredge in the Sacramento River shall be placed and handled so as not to interfere with the navigation of the Sacramento River by vessels and steamers. Such regulations as required by the United States Government in the handling of hydraulic dredges in taking material from the bed of navigable waters shall be conformed to by the party of the second part, and the party of the first part shall not in any way be responsible or liable for damages for any negligence on the part of the party of the second part *on* any of its employes in not conforming with the regulations of the United States Government regulating vessels and dredges working in navigable waters.

The Company will pay for the rebuilding of any County of other public road and farm roads, which require rebuilding on account of the proper construction of the railroad.

The Company will not pay for the construction of any wagon or other roads required for the carrying out by the Contractor of the work to be done under this agreement.

In the proper prosecution of this work, where it is necessary to have laborers, teams, scrapers, plows, wagons, etc., the Company agrees to pay for the transportation of same, also pay for transportation of hay, grain and coal for camp fuel use from points in

California to the work, that shall be necessary [622] for the proper construction thereof, said transportation to be on railroads operated by the Company.

The Contractor is to pay for the transportation of groceries, provisions and articles for sale.

And it is further agreed by the Contractor that this agreement, or any part thereof, shall not be assigned or transferred by the Contractor without the written consent of the Company being had and obtained, and any violation of this condition by the Contractor will cause an immediate cancellation of this agreement, at the option of the Company.

Should the Company at any time become dissatisfied with the rapidity or the manner of the prosecution of the work to be done under this agreement, or the quality of the workmanship of the Contractor, the Company to be the sole judge thereof, and if the contractor shall fail, neglect or refuse, when requested to do so, to remove the cause of such dissatisfaction, then in such case, upon being so notified by the Company, no further work shall be done by the Contractor, and the Company shall pay to the Contractor, within sixty (60) days thereafter, for all work completed as estimated by the Engineer, less the cost to the Company of the material and labor necessary, in the judgment of the Engineer, to correct the unsatisfactory work of the Contractor, provided no liens of any kind shall have been imposed upon any of the premises aforesaid.

Monthly estimates shall be made at the end of each calendar month, and payments for work done shall be made as provided [623] for in this agreement,

and the said Company shall pay at its office in San Francisco, on the twentieth (20th) day of each succeeding month, seventy-five per cent (75%) of the amount due said contractor at the time such estimate was made, and shall pay the remaining twenty-five per cent (25%) of the amount due said contractor at the time such estimate was made ninety (90) days after the completion and final estimate of the entire work to be done under this agreement provided no liens of any kind shall have been imposed upon any of the premises aforesaid.

All material and workmanship to be to the satisfaction of the Engineer, whose decision shall be final in all matters affected by this agreement, which may be in dispute between the Company and the Contractor.

The Engineer herein referred to is the Chief Engineer of the Sacramento Southern Railroad Company, or his duly authorized Assistants.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by its Chief Engineer, and the said party of the second part has caused its Corporate name to be hereunto subscribed and its Corporate seal hereunto affixed by its President, thereunto duly authorized, the day and year first above written.

SOUTHERN PACIFIC COMPANY.

By WILLIAM HOOD,

Chief Engineer.

STANDARD AMERICAN DREDGING
COMPANY.

By R. A. PERRY,

President." [624]

(Deposition of R. A. Perry.)

Mr. LILLICK.—Q. In your operations at Walnut Grove; and in doing the work there, had you any other purpose at all in view other than filling or making the roadbed? A. No, sir.

Q. What was the effect of the work done with reference to from where the material was taken?

A. Why, we dug holes wherever we could get sand available to make the fill. There was no particular place where we were required to make excavations whatever.

Q. What effect, if any, did that have on the navigability of the Sacramento River?

A. It did not make any difference to the navigation of the Sacramento River. We dug pot holes. In some places we dug deep, and some places we did not dig at all. In other words, the cut was not continuous. We excavated simply as a matter of convenience to the fill so as to create the shortest pipeline condition possible.

Q. In transporting material from the cut you made in the river, did you in any way use anything in the shape of a vessel for transporting material?

A. No, sir.

Q. What was the condition of the pipe through which you discharged this material as to being adjustable or not?

A. The pontoon pipe was carried on floats or pontoons, the pontoon pipes having rubber connections between each pontoon so as to allow the pipe-line sustained on the pontoons to be flexible.

Q. Was any of this material that you dug deposited

(Deposition of R. A. Perry.)

on scows or barges? A. No, sir.

Q. Going back to the date of the agreement under which you leased the "Richmond No. 1" the 26th day of February, 1910, state what the condition of the engines that were on board the [625] dredger on that day was with reference to the work that you were going to do with the dredger?

A. I am not sure that this is the correct date as to the charter-party that you refer to. The condition of the engines from the 26th day of February, 1910, was as good less ordinary wear and tear as they were at the time we chartered the dredge previously.

Q. Mr. Perry, in your own language will you state what you did with reference to the engines which were on board of the dredger when you obtained it from the Richmond Dredging Company, and why you did it, giving such particulars of the work that you desired to do with the dredger as may make it necessary?

A. I might ask you what date you mean that we obtained the dredger from the Richmond Dredging Company.

Q. February 10th, 1909.

A. The engines were in need of repairs, and we thereupon notified the Samson Iron Works, the builders of the gas engines which were then on the dredge "Richmond No. 1," to send the best man they had, and to make an examination of these engines, and do whatever was necessary to overhaul the engines so that they would be in a condition to work as well as they were able to do. Thereupon they sent

(Deposition of R. A. Perry.)

mechanics from Stockton—this was where their works were located—and during the time we were hauling the dredge from Oakland Creek overland to Lake Merritt the iron works men worked on the gas engines grinding valves, furnishing some new valves and doing various work on the engines for their improvement. The work which we paid for amounted to considerable money, probably \$300. I want to ask whether you want me to describe the operation of the engine after starting up, after these repairs were made in Lake Merritt. [626]

Q. Yes, and go on with what you did with the engine, why you did it, and if you replaced those engines with other engines, the reason why you did it. Give us a history.

A. You wish to have me give a history of what I know about the engines up to the time that we turned the dredge back?

Q. Yes. It is a long story, Mr. Perry, but give it to us.

A. After the dredge was delivered in Lake Merritt we started operations of dredging the material in Lake Merritt which consisted of very soft mud, very light specific gravity, not much heavier than water. The first month's work was on the short pipe-line, and practically about 2½ feet discharge above the water level of the lake. Lake Merritt is furnished with flood-gates so as to hold the tide in the lake, and not allow it to ebb only as may be desired for flushing the sewer system, therefore the water elevation remains practically the same for a

(Deposition of R. A. Perry.)

large percentage of the time. As soon as the pipe-line was increased due to insufficient power for increased length of pipe-line, and in view of the fact that the engines were not high powered, we were unable to make good progress with the dredging. We anticipated this before the necessity came for adding additional pumping power by providing an additional 12-inch pump, the same size as was located on the dredge. This centrifugal pump is known as a booster, which we installed on the float between 800 and 1200 feet from the dredge boat, which pump was driven by a 250 horse-power electric motor, the current for which was purchased from the electric company of Oakland. In explanation as to how this booster pump is used I offer the following. The dredge pump discharges directly into the suction of the booster pump where it may be located 800 to 1000 feet from the dredge, in this particular case, and the [627] booster pump receives the material in liquid form at whatever velocity the dredge pump may be able to deliver it at. The booster pump then increases the velocity, and on account of the booster pump having in this instance two times as much power as the dredge pump engines we were able to deliver the material the additional distance required under the contract with the city of Oakland for dredging Lake Merritt. This booster was employed to make it possible to complete this contract during the balance of the contract in Lake Merritt. If the dredge boat had had sufficient power for that particular work we would

(Deposition of R. A. Perry.)

not have been required to use a booster at all, as we have pumped material of this consistency, and under the conditions described, more than 6,000 feet with a single dredge pump located on the dredger many times in our contracting experiences. During the time of the operation of these engines in Lake Merritt we were constantly repairing same and doing all we could to get the most efficiency out of them. As heretofore stated, the two engines combined were not capable of delivering more than 125 horse-power. After completion of the work in Lake Merritt we removed the dredge to the Oakland Creek and from there to Eureka, California, where we had a filling contract for the Pacific Lumber Company at Eureka. The material there consisted of sand and mud, and in order to increase the output of the dredge boat in pumping this material we furnished an electric motor to drive the cutter, and another one to drive the pump shortly after we arrived at Eureka, setting this motor on the deck of the dredge leaving the engines as they were installed, and simply disconnecting the belt from the main engines to the pump.

Q. Not using the original engines at all? [628]

A. We did not use the original engines at the same time that we used the motor.

Mr. TAUGHER.—(Addressing counsel.) We ought to have had those motors.

A. (Continuing.) After completing the work at Eureka the dredge was again towed to San Francisco where we started operations of dredging at

(Deposition of R. A. Perry.)

Alameda, some 100,000 yards of sandy material. We had arranged upon completion of the work at Alameda to go to Walnut Grove, and make a fill for the Southern Pacific Railroad Company, which required a special or additional power over the gas engines belonging to the dredge "Richmond" to operate the pump, as the sandy material to be pumped was very heavy, being mostly quartz sand, and the elevation of the material to be delivered was from 20 to 30 feet above the water level. We were aware of the fact that we would have to provide at least twice the power on the centrifugal pump which was then on the dredge "Richmond," consequently we determined, and did charter a gas engine from the Atlas Gas Engine Company. This engine was known as a 150 horse-power engine, shop rating. We believed however that 125 horse-power was all the engine was capable of continuously performing, therefore we proceeded to and did charter this engine, and installed it on the main deck of the "Richmond," expecting to couple up the engines of the "Richmond" on another pulley, and operate the three engines at Alameda. This method was not entirely satisfactory, so after completing this work we decided to charter an additional gas engine of the same style of make and horse-power as the one already chartered from the Atlas Gas Engine Company. We installed these two engines so as to work in unison, that is, when one would start we would throw a clutch in and couple up the second engine, both [629] engines then operating and

(Deposition of R. A. Perry.)

driving the one pulley, in the same manner that the Richmond Dredging Company's engines operated. By this arrangement we were able to deliver to the pump at least two times as much power as the "Richmond's" engines could deliver.

Q. From whom did you rent that second gas engine?

A. The second gas engine, being an Atlas Gas Engine, was chartered from the California Reclamation Company. In order to make proper space without locating the engines on the main deck, which of course could have been done, we decided to remove the "Richmond's" engines and reinstall them again on completion of the Walnut Grove work, and deliver our return of the dredge as provided for at the place provided for in the charter-party, that is, at Richmond, California. Upon completion of the Walnut Grove work we removed the Atlas gas engines above described, and returned them to their respective owners, towed the dredge to Richmond and installed the Richmond Dredging Company's engines in the same place and conditions as they were originally when we chartered the dredge. The Richmond Dredging Company's engines had been stored in a warehouse at Richmond, which we believed belonged to the Richmond Dredging Company, but I am not positive as to this, the intention being that they would be readily available when we were ready to reinstall them on the dredge "Richmond" upon the return of the dredge.

Q. Did you at any time use the two Atlas gas

(Deposition of R. A. Perry.)

engines which you put upon the dredge with the two gas engines which were originally on board of the dredge?

A. No, sir, we did not use the two up with the two engines of the Richmond Dredging Company, as they would not pull together. [630]

Q. Had either of the Atlas gas engines which you put upon the dredge "Richmond No. 1" as you have just described, been used before you put them on the dredger? A. Yes, sir.

Q. For how long, if you know?

A. The first engine that we chartered from the Atlas Gas Engine Company, had been used, I believe, for about one year, on the Southern Pacific work at the Dumbarton Bridge Works, and I believe had been used previously by other parties before we chartered the engines.

Q. What was the condition of the engine when you put it on board of the dredge "Richmond No. 1"? A. It was able to do its work.

Q. What was the condition of the cylinders?

A. One of the cylinder jackets was cracked and had to be patched so as to keep the water from working through into the chamber.

Q. What was the condition of the gas engine which you rented from the California Reclamation Company, when you put it on the dredge "Richmond No. 1"?

A. The condition of the California Reclamation Company's engine was in fair engine, although its cylinder-jacket was cracked in the same way that

(Deposition of R. A. Perry.)

the Atlas Gas Engine Company's engine jacket was cracked, and this had to receive a patch as well.

Q. How long, if you know, had this engine belonging to the California Reclamation Company, been in use before you put it on dredge "Richmond No. 1"? A. About two years.

Q. If you know, what was the value of the engine that you [631] rented from the Atlas Gas Engine Company, when you put it on the dredge "Richmond No. 1"?

A. I could not tell you exactly what the value was, but they offered to sell it for \$3,000, and apply the charter money, whatever we might pay during the charter up to a certain time that we might have exercised our option to purchase; if we did not exercise our option to purchase within a certain time, then the charter money should not apply, although we had a right to purchase the engine at any time that we saw fit after that point or date. Mr. Warrenskjold came over to the office, and after we had it for some little time he said, "If you will take that engine and pay us cash for it, instead of letting it be paid in a slow way, we will reduce the cost of this engine and make it \$2,400 instead of \$3,000."

Q. Mr. Perry, I hand you a document which is dated May 20th, 1910, and engrossed "Lease," and ask you whether or not that is the paper under which you originally rented the Atlas gas engine which you have just been testifying about?

A. Yes, sir.

Mr. LILLICK.—I offer that lease in evidence

and ask that it be marked Claimant's Exhibit No 5.

(The lease is marked "Claimant's Exhibit No. 5," and is as follows:) [632]

[Claimant's Exhibit No. 5.]

"LEASE.

THIS INDENTURE MADE AND ENTERED INTO, this the 20th day of May, A. D. 1910, By and between the ATLAS GAS ENGINE COMPANY, a corporation, of the City and County of San Francisco, California, the Party of the First Part, and, R. A. PERRY, of the same place, County and State aforesaid, the party of the Second part,

WITNESSETH, That the said Party of the First part does by these presents lease and demise unto the said party of the Second part one 12 x 12 'Atlas' 4 Cylinder Stationary Gas Engine for the Monthly rental of Two Hundred (\$200.00) Dollars, payable as follows: Two Hundred (\$200.00) Dollars to be paid on the signing of this Lease, and Two Hundred (\$200.00) Dollars to be paid in Sixty (60) Days from Date hereof, and Two Hundred (\$200.00) Dollars to be paid at the end of each and every Thirty Days thereafter of Fraction thereof Until the said engine has been returned to the Atlas Gas Engine Company Works at East Oakland, California, and it is Expressly understood and Agreed by all parties hereto that the sum of rental of four hundred (\$400.00) Dollars is to be paid to the said party of the First part by the Second party for the First Sixty *Days* (60) Days, as above mentioned, even though the said Second party may have returned said engine to the Atlas Gas Engine Company

Works, before the expiration of the Sixty days, this \$400.00 is composed of the \$200.00 cash paid on the signing of this Lease and \$200.00 to be paid Sixty days thereafter.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED, that this [633] engine is to be returned to the First party's works in as good order and condition as that in which it was received, reasonable use and wear thereof excepted. That the Second Party is to at all times keep said engine in reasonable good working order and condition, and First Party has the right and privilege to examine said engine at any time to see that the same is being kept in condition aforesaid.

AND IT IS FURTHER AGREED AND UNDERSTOOD, by all parties hereto that this engine is to be used on the Bay of San Francisco, Cal., or its Tributaries, and not to be taken out of the State aforesaid or out of the Said Bay or Tributaries without the written consent of the First Party.

AND IT IS FURTHER AGREED AND UNDERSTOOD by all parties hereto that in case of default in any of the payments mentioned herein, or in the failure to comply with all agreements mentioned herein at the times and in *the mentioned* therein, then this lease to be void and canceled, and the First party has the right to enter upon the premises, wherever said engine may be, and remove said engine to the Works aforesaid at the cost and expense of the said Second party, provided said Second party will not at once make such delivery, but the Second has the right and privilege of keeping said

(Deposition of R. A. Perry.)

engine as long as he so desires provided this lease has been fully complied with.

AND IT IS FURTHER AGREED AND UNDERSTOOD BY ALL PARTIES HERETO THAT, said Second party has the right and privelege of purchasing the said engine at any time he so desires during the life of this Lease for the sum of Thirty Five Hundred [634] (\$3500.00) Dollars, and if purchased within One Hundred and Twenty Days from date hereof all of such Rental paid to apply on said purchase price.

IN WITNESS WHEREOF, both parties have hereunto set their hands and seals this the day and year first above mentioned.

ATLAS GAS ENGINE COMPANY,

By L. W. MOBERRY,

Secretary.

R. A. PERRY.

May 20, 1910.

Received check for \$200.00 as above provided:

ATLAS GAS ENG. CO.

By L. W. MOBERRY."

Q. I hand you a letter dated June 29th, 1910, purporting to be signed by "Atlas Gas Engine Company, by A. Warenskjold," and ask you whether or not this is a letter received by you after the conversation which you have just testified to (handing).

A. No, sir, this was before.

Q. Do you know how long before?

A. No, sir, I do not remember, exactly. It is so long ago I do not remember, exactly. It might have

(Deposition of R. A. Perry.)

been a month before.

Q. The Atlas gas engine mentioned therein was in constant use by you during the time from the first lease, which is in evidence as "Claimant's Exhibit 5," and the conversation about which you have just testified? A. Yes, sir. [635]

Mr. LILLICK.—I offer the letter dated June 29th, 1910, just referred to, in evidence, and ask that it be marked Claimant's Exhibit No. 6.

(The letter is marked "Claimant's Exhibit No. 6" and is as follows:)

[Claimant's Exhibit No. 6.]

"San Francisco, Cal., June 29th, 1910.

Standard American Dredging Company,
No. 706 Merchants Exchange Bldg.,
San Francisco, Cal.

Gentlemen:

This is to confirm our verbal conversation and is to advise you that it will be agreeable to us to sell to you the Atlas Gas Engine which you now have leased from us under agreement dated the 20th day of May, 1910, and the selling price to be Three Thousand Dollars (\$3,000.00) and we will apply rentals which have been paid, being Two Hundred Dollars (\$200.00) on account of said purchase price, leaving balance for you to pay in order to purchase the engine, of Twenty-eight Hundred Dollars (\$2800.00).

If you accept the above proposal on or before July 10th, 1910, it will be agreeable to us to accept

(Deposition of R. A. Perry.)

your ninety day note for the above amount.

Yours truly,

ATLAS GAS ENGINE COMPANY.

By A. WARENSKJOLD."

Q. As I understand you, the conversation that you have testified to as having been had between you and Mr. Warenskjold, where he offered to sell you the engine for \$2,400, occurred subsequent to June 29th, 1910? A. Yes, sir—after.

Q. What, in your opinion, was the value of the gas engine rented [636] from the California Reclamation Company?

A. The gas engine was the same in bore and size, and every way the same as the one chartered from the Atlas Gas Engine Company, as far as the parts used on the dredge "Richmond" were concerned. We only used such portions of the engine from the California Reclamation Company as were required to operate in a stationary manner, that is to say, no marine equipment was necessary.

Q. In your opinion, Mr. Perry, was there any difference as to value between the engine rented by you from the California Reclamation Company and the engine rented by you from the Atlas Gas Engine Company?

A. I do not think there was any material difference as to the value of the engine as used on the "Richmond."

Q. Any material difference as to the condition in which those two engines were, when you used them on "Richmond No. 1"? A. I think not.

(Deposition of R. A. Perry.)

Q. How much more power, comparatively, had the two engines of the Atlas Gas Engine Company and the California Reclamation Company than the two which were originally on board the "Richmond No. 1"? A. Two times.

Q. Where had the engine belonging to the California Reclamation Company been in use previously to the time you used it on "Richmond No. 1"?

A. It had been used in a launch.

Q. What launch? A. Known as the "Wink."

Q. Where was the "Wink" when the engine was removed from her to the "Richmond No. 1"?

A. I believe at Walnut Grove.

Q. Do you know whether or not the launch "Wink" remained beside the "Richmond No. 1" during the time her engine was out, and on board of "Richmond No. 1"? [637]

A. The launch was anchored in a little slough adjacent to Walnut Grove while the engine was being used on "Richmond No. 1," and on completion of the filling at Walnut Grove, the engine belonging to the California Reclamation Company, and being a part of the equipment of the launch "Wink" was removed from the "Richmond No. 1" and reinstalled in the launch "Wink."

Q. To whom did the launch "Wink" belong?

A. To the California Reclamation Company.

Q. To whom did the engine belong?

A. The California Reclamation Company.

Q. To whom did the first engine that you put on "Richmond No. 1" belong?

(Deposition of R. A. Perry.)

A. The Atlas Gas Engine Company.

Q. After you had removed the two gas engines from "Richmond No. 1" to whom did you return them?

A. I returned the California Reclamation Company's engine to the California Reclamation Company, and the Atlas Company's gas engine to the Atlas Gas Engine Company.

Q. What has been your experience with gas engines as to opportunity for forming a judgment about the working of them?

A. I have had some experience in connection with gas engines.

Q. How long have you used them?

A. I suppose about 10 years.

Q. Can you state whether or not a gas engine can be injured by putting on more power than the schedule of horse-power that the engine has?

A. I doubt if you can get more horse-power than they are designed for.

Q. Will you explain why?

A. You cannot increase the charge pressure like you could with a steam engine; for instance, if you are using steam on an engine wherein the engine is [638] designed to carry 100 lbs. of steam, and you have a boiler that is safe to carry 200 lbs. of steam and raise the pressure for instance to 200 lbs., and deliver it to the engine designed to carry 100 lbs., you might expect to do some damage. In the case of a gas engine you cannot materially raise the pressure by any means, and the volume that the cylinders

(Deposition of R. A. Perry.)

may take in can only be increased a nominal amount which the engine is tested for, when it is on the testing stand in the shop, at which time the engine is given the highest rating that is ever possible to get out of her, because the conditions of the gas engine at that time are as good mechanically as they ever are afterwards, or better, due to the fact that all parts are tight and well fitted.

Q. Is there any possible way in which a gas engine can be damaged by attempting to get more power out of her for work you are doing?

A. I think not, if the engine is intelligently handled.

Q. What do you mean by "intelligently handled"?

A. I mean to say, if the circulating water is kept going around the cylinders, and other parts taken care of, the same as you would in a steam engine; for instance, if you allow the water to become too low in your boiler, you would blow her up. That is what I mean by intelligently handling of the engine.

Q. By handling an engine intelligently with a competent engineer, is there any possible way in which you can damage the engine by attempting to obtain additional power out of her? A. I think not.

Q. Mr. Perry, when you removed the two gas engines, which you placed on the dredger "Richmond No. 1," had you any intent or desire to show any disrespect or contempt or disregard of the District Court of this district?

A. No, sir, none whatever. [639]

Q. In so doing, upon whose advice did you act?

(Deposition of R. A. Perry.)

A. On the advice of our attorneys.

Q. Do you remember what day it was that you replaced the engines which were originally upon the dredger "Richmond No. 1"?

A. I have not got the date in my memory, but it was in the month of January, I believe.

Q. In replacing them, do you know whether or not they were installed on the dredger in the same condition as they were as to working parts and actual connections with the dredger when you originally obtained it from the Richmond Dredging Company?

A. I believe they were.

Q. Do you know upon what day the dredger "Richmond No. 1" was tendered back to the Richmond Dredging Company?

A. Sometime in January, 1911. I don't remember the date.

Q. Do you know whether or not the engines, and the dredger itself were in the same condition in which it was when you received it, less reasonable wear and tear? A. I believe it was.

Q. Do you know whether or not it was in as good order and condition as it was required to be by the terms of the lease which you had from the Richmond Dredging Company? A. I believe it was.

Mr. LILLICK.—I have copies, Mr. Taugher, of the letters which were interchanged between the two companies. I will put those copies in of the letters that we sent to you. You have the originals, and if you desire, or if you care to let us have the originals, we will put those in.

(Deposition of R. A. Perry.)

Mr. TAUGHER.—If they are true copies that you put in, it is all right. I could not say off the reel whether I have the originals or not. [640]

Mr. LILLICK.—Q. I hand you a package of bills with vouchers attached, the first bill being headed “Samson Iron Works, Stockton, California,” and dated “May 19th, 1909,” and ask you whether or not those bills and vouchers are for work done on the engines which were originally upon the dredger “Richmond No. 1”?

Mr. TAUGHER.—During what period do they cover?

Mr. LILLICK.—Whatever the bills show.

A. (After examination.) Yes.

Mr. LILLICK.—I offer them in evidence and ask that they be marked Claimant’s Exhibit No. 7.

The WITNESS.—I call attention to the bills which are for a portion of the repairs on the engine, that the bill noted as 51,909, was for repairs made on the engines at a later date than the repairs made while the dredge engines were being repaired before starting work on the lake, but they were all made to the engines during the time when she was in Lake Merritt.

Mr. TAUGHER.—Q. How much do they amount to? Do you know the total amount of the bills?

A. I could not tell without adding them up. I don’t know.

Q. You have not totalled them at all?

A. They might be in the vouchers. I will look. (After examination.) As I see it here, the repairs

(Deposition of R. A. Perry.)

before going into the lake amounted to about \$317.

Q. And after?

A. The bills that I have here, some two or three months after, amount to \$365 additional. This last mentioned amount was on account of breaking a crank-shaft of the engine, which after breaking allowed the crank-shaft to break the bed-plate of the engine, which made a total charge of \$365. The bed-plate and [641] crankshaft were entirely renewed, being brand new.

Mr. LILLICK.—Q. Would this leave the engine in better condition than it was before?

A. It would provide a new bed-plate and new crank-shaft, which would make the engine better than when we chartered the dredge, as the crank-shafts of gas engines are apt to become crystallized after being used a long time, therefore a new crank-shaft with a new bed-plate should improve the engine.

(The package of bills are marked “Claimant’s Exhibit No. 7,” and are as follows:)

[Claimant’s Exhibit No. 7.]

“SAMSON IRON WORKS,
Stockton, California.

5/19/09.

Our No.—22266.

Sold to—Standard American Dredging Co., San
Francisco, Cal.

Shipped to —Same.

Shipped via—Express.

Your No.—Telephone.

Extension. Total.

1-3 throw crank-shaft.....\$195.00

1-bed plate, with caps all machined

and crank fitted to bed-plate... 170.00

————— \$365.00

O. K.—KNIGHT.”

“STANDARD AMERICAN DREDGING CO.

San Francisco, May 31, 1909.

To Sampson Iron Wks. Dr.

Amount.

May 19. To invoices attached as per list...\$365.00

Approved for payment.

W. A. H. C.,

Auditor.

Received Sep. 4, 1909, [642] of Standard
American Dredging Co. Three Hundred & Sixty-five
dollars.

SAMSON IRON WORKS.

In full of above account.

Sign here—By F. B. HUBBARD, Sec.”

“SAMSON IRON WORKS,

Stockton, California.

3/16/09.

Our No.—21101.

Sold to—Standard American Dredging Co., San
Francisco.

Shipped to—Same.

Shipped via—Send to foot of Oak St., Oakland.

Your No.—Phone.

	Extension.	Total.
Starting 150 H. P. engine.....	17.60	
R. R. fare, care fare, board and lodgings.....	8.60	
	————	26.20

LAKE MERRITT No. 4.

Accounts Payable.”

“STANDARD AMERICAN DREDGING CO.

San Francisco, Apr. 1, 1909.

To Samson Iron Works, Dr.

	Amount.
March 16. To invoices attached as per list..	26.20
Received Sep. 4, 1909, of Standard American Dredging Co., Twenty-six 20/100 Dollars.	

SAMSON IRON WORKS.

In full of above account.

\$26 20/100.

Sign here—By F. B. HUBBARD.” [643]

“SAMSON IRON WORKS,

Stockton, California.

3/13/09.

Our No.—20879.

Sold to—Standard Dredging Co., San Francisco, Cal.

Shipped to—Same.

Shipped via.—

Your No.—Mr. Connor, Vice-Pres.

	Price.	Extension.	Total.
2—sockets for top of governor at.....	.40		.80
2—brass screened unions $\frac{3}{8}$ at....	.60		1.20

	Price.	Extension.	Total.
2—brass elbows $\frac{3}{8}$ " at .21			
— .42 less 10%38	
2—iron bushings $\frac{3}{8}$ " to $\frac{1}{4}$			
at04	.08	
2—close nipples $\frac{3}{8}$ at04	.08	
1—V-sparker gland complete		6.00	
1—sparker dog		1.00	
1—sparker rod with collar and spring		1.75	
	—		11.29''

“STANDARD AMERICAN DREDGING CO.

San Francisco, Apr. 1, 1909.

To Samson Iron Works, Dr.

Amount.

March 13. To invoices attached as per list . . . 11.29

Received Sep. 4, 1909, of Standard American Dredging Co. Eleven 29/100 Dollars.

SAMSON IRON WORKS.

In full of above account.

\$11.29.

Sign here—By F. B. HUBBARD.” [644]

“SAMSON IRON WORKS,

Stockton, California.

Our No.—20748.

Sold to—Standard American Dredging Co., San Francisco, Cal.

Shipped to—Same, foot of Oak Street, Oakland, Cal.

Shipped via—Steamer.

Your No.—Hannah.

Extension. Total.

Repairing pistons and parts as		
were shipped by steamer.....	14.50	
1—new inlet valve.....	2.50	
1—new stud 1½x5.....	.25	
1—float for vaporizer.....	.75	
1—cover for vaporizer.....	2.00	20.00

LAKE MERRITT No. 4.

Accounts Payable.

Repairs.”

“SAMSON IRON WORKS,
Stockton, California,

2/20/09.

Our No.—20745.

Sold to Standard American Dredging Co., 722 Merchants Ex. Bldg., San Francisco, Cal.

Shipped to—Same, foot of Oak Street, Oakland, Cal.

Shipped via—Express.

Your No.—Hannah letter.

Price. Extension. Total.

50' battery wire.....	.011¼	.62	
2—5⁄8x1½" cap screws, .10.	.20		
	40%	.12	
1—#2 brass wipe oil cup, used on crank-brasses..		.40	[645]
6—taper pins as are used in exhaust yoke #4.....	.04	.24	
2—sparker rod collars.....	.25	.50	
2—sparker rod dogs.....	1.00	2.00	
6—5⁄16x1½" set screws	2.00 .12		
	40%	.07	

Price. Extension. Total.

6—5/16 brass nuts as are used on insulated elec- trode pins.....	.05	.30	
6—5/16 nuts as are used on sparker rods heads cold pressed..		.10	
6" Samson sparker points..	.75	4.50	
1—steel spiral gear, right hand, as is used on crank shaft....		10.00	
1—bronze spiral gear, right hand that runs in same.		10.00	
10#—1/32" Tauril gasket.	2.00	20.00	
2—1" keys as are used on spiral gears on crank shaft....	.25	.50	
2—sparker cams.....	2.00	4.00	
6—sparker gland studs)			
6—nuts for above)....	.15	.90	
6—5/16x3/4" cap screws, 3.25	.20		
40%		.12	
12—12/24 1" brass screws..		.12	
2—exhaust valves.....	3.00	6.00	
yokes for same.....	2.00	4.00	64.49

LAKE MERRITT No. 4.

Accounts Payable.

Repairs." [646]

“SAMSON IRON WORKS,
Stockton, California.

2/24/09.

Our No.—20800.

Sold to—Standard Dredging Co., Oakland, Cal.

Shipped to—Standard American Dredging Co.

Shipped via—Express.

	Extension.	Total.
Repairing 11x12 governor including..	4.25	4.25
1—new valve.		
1—new stern.		
1—new spring.		
1—new collar.		

LAKE MERRITT No. 4.
Accounts Payable.
Repairs.”

“SAMSON IRON WORKS,
Stockton, California.

2/24/09.

Our No.—20778.

Sold to—Standard American Dredging Co., Oak St.,
Oakland.

Shipped to—Standard American Dredging Co., Oak-
land.

Shipped via—Express.

Your No.—Hannah.

	Price.	Extension.	Total.
22—11x12 piston rings not cut at.....	2.00	44.00	
6—studs as are used to hold exhaust valve chamber			

on to cylinder. These
 studs must be made spe-
 cial $\frac{3}{4}$ " on the end
 screwing into the cylin-
 der and the remainder
 of studs turned to $\frac{5}{8}$ "
 at .40.....2.40

 46.40

LAKE MERRITT No. 4.

Accounts Payable.

Repairs." [647]

"SAMSON IRON WORKS,
 Stockton, California.

2/27/09.

Our No.—20680.

Sold to Standard American Dredging Co., San Fran-
 cisco, Cal.

Shipped to—Same.

Your No.—Mr. Conner, Vice-Pres.

Price. Extension. Total.

Sending men to overhaul Richmond
 Dredging Co.'s 150 H. P. engine,
 now located at foot of Oak Street,
 Oakland,

R. J. Hannah.....98 $\frac{3}{4}$ hoursA. K. Gum.....67 $\frac{1}{4}$ "

 166 " .80 132.80

Expenses R. J. Hannah, including R. R.
 fare, board & lodging, carfare and
 1 doz. hack saw blades.....

21.90